

commissions, as well as the FCC, to encourage deployment of advanced telecommunications capability by, among other things, employing measures that promote competition in the local telecom market, or other regulating methods that remove barriers to infrastructure investment. Pub.L. 104-104, Title VII, §706, Feb. 8, 1996, 110 Stat. 153, as amended Pub.L. 107-110, §1076, Jan. 8, 2002, 115 Stat. 2093. This is clearly what the LPSC rules accomplish by protecting against the creation of barriers to entry to the local telecommunications market created by the ILEC, BellSouth.

The LPSC is a constitutionally created state public utility commission that regulates common carriers and public utilities. The LPSC regulates telecommunications providers consistent with the Act and its state constitution. The LPSC has implemented these Orders in accordance with the Act and its own rules to preserve and promote competition in the local telecommunications market.¹

I. INTRODUCTION AND SUMMARY

These comments will be largely directed toward the rules that the LPSC has currently put in place with regard to the provision of wholesale and retail DSL services to voice customers of CLECs using UNE-P facilities through its Orders R-26173 & 26173-A (collectively referred to herein as “Order” or “Orders”). The LPSC Orders provide that BellSouth (“BellSouth” “Bell” or “BST”) may not refuse to provide DSL service to a CLEC voice customer via UNE-P, regardless of whether the DSL is provided by FastAccess or another ISP. BellSouth claims that these rules are inconsistent with the Act in that they purport to regulate interstate telecommunication services in a manner that is directly contrary to binding FCC rulings and to BellSouth’s federal tariff. Bell further claims that “information services” such as “FastAccess”, have been deemed

¹ Specifically Louisiana General Order dated April 5, 2000, amended July 24, 2002 - *In re: Regulations for Competition in the Local Telecommunications Market* (“Local Competition Regulations”) attached as Exhibit A.

unregulated by this Commission, and thus states are preempted from regulating these services in any way.

The LPSC agrees that it lacks jurisdiction to regulate purely interstate telecommunications services and information services. The LPSC specifically recognized this in the relevant Orders.² However, the issue is not one of regulating information services, but rather one of anti-competitive behavior on the part of the ILEC which affects customer choice and creates a barrier to entry in the local telecommunications markets, something over which the LPSC does have jurisdiction. By refusing to provide DSL to non-Bell voice customers, Bell is effectively “trapping” its local customers and creating an anticompetitive advantage in the local voice market. Few, if any, Bell voice customers would go through cost and inconvenience of changing voice providers only to find that their DSL service would be discontinued. Such a result is undoubtedly inconsistent with the Act and state law.

In the recent case *BellSouth Telecommunications, Inc. v Cinergy*, 2003 WL 23139419 (E.D. Ky. Dec. 29, 2003), the United States District Court for the Eastern District of Kentucky found that the same act of the Kentucky Commission of prohibiting Bell from refusing to provide wholesale DSL to a CLEC local voice customer over UNE-P was not preempted by the Act and was consistent with the Act and Kentucky law. The Court specifically cited the United States Supreme Court as having recognized that “the Act cannot divide the world of domestic telephone service ‘neatly into two hemispheres,’ one consisting of interstate service, over which the FCC has plenary authority, and the other consisting of intrastate service, over which the states retain exclusive jurisdiction.” *Id.* at 5, citing *Louisiana Pub. Serv. Comm’n v. Pub. Util. Comm’n of Texas*, 208 F.3d 475, 480 (5th Cir. 2000). The Court also pointed out that “when a

² Order R-26173, R-26173-A attached hereto as Exhibits B & C respectively.

state law is not expressly preempted, courts must begin with the presumption that the law is valid.” *Id.* at 6. Finally, the Court recognized that “the Act permits a great deal of state commission involvement in the new regime it sets up for the operation of local telecommunications markets, ‘as long as state commission regulations are consistent with the Act.’” *Id.* at 6, citing *Michigan Bell, supra* at 359. Thus, the Court found that the Kentucky rule was not preempted. Just as in *BellSouth, supra*, the Louisiana rule is also consistent with the Act and Louisiana Law.

With even more reason the requirement that Bell may not refuse to provide its FastAccess service to CLEC voice customers over UNE-P is consistent with the Act and Louisiana Law since local customers are immediately aware that Bellsouth provides such a service which can only be secured if the customer is also a Bell voice customer. This is most certainly anti-competitive behavior prohibited by the Act. This Commission has recognized that “preemption of state regulation in this area should be as narrow as possible to accomplish differing state views while preserving federal goals.” 6 F.C.C. Rcd. 7571 (1991). The Louisiana Commission recognized that neither Louisiana local customers, nor the CLECs were receiving the competitive advantages of sections 251 and 252 as required by the Act and this Commission, thus the LPSC took actions to assure that the policies of the 1996 Act and Louisiana law were preserved. The LPSC Order did not regulate the FastAccess service itself; it did not proscribe rates, nor did it require Bell to act pursuant to a tariff. Rather the LPSC was regulating intrastate voice service and imposed obligations on Bell to insure the Company’s compliance with the pro-competitive intent of the Act. The Orders do not impose interstate obligations upon actual Internet traffic traveling through Bell’s FastAccess Service. Instead, the Orders applied to Bell’s prejudicial provisioning of FastAccess DSL access in Louisiana – that is, the dispensation of permission to

use the service, rather than the actual content flowing through the service itself. The Orders merely preclude Bell from discriminating against customers of CLECs.³ Bell may not use DSL as an incentive to attract customers to its voice service or as a disincentive for those customers planning to change from Bell to a CLEC. Likewise, since the LPSC was not acting pursuant to section 252 of the Act, but according to its rules enacted pursuant to its constitutional authority, the Commission was empowered to issue such an order. The policy of both the Act and Louisiana law is to end the ILEC's dominance over the local market. [6 F.C.C. Rcd. 7571 (1991); LPSC General Order dated April 5, 2000, amended July 24, 2002 *In re: Regulations for Competition in the Local Telecommunications Market*].

The Louisiana Commission's proceeding was initiated as a result of recommendations made by LPSC Staff ("Staff") in Docket Number U-22252-E, *In re: BellSouth's Section 271 Pre-application*. This docket addressed numerous issues, including a discussion of BellSouth's practices in line splitting arrangements in which BellSouth refused to provide a customer with its retail DSL service unless that customer also purchased its voice service from Bell. (See Staff's Final Recommendation, Docket U-22252-E, at 86-87 attached hereto in relevant part (pp. 1-21, 75-90, 111-116) as Exhibit D.) After thoroughly investigating these issues, the LPSC Staff recommended:

That the Commission order BellSouth to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice service under the same terms and conditions that BellSouth offers the high frequency portion of its loops in line sharing arrangements. Staff further recommends that the *CLEC shall be prevented from charging BellSouth for use of its UNE loop*. Any issues regarding implementation of this recommendation shall be referred to the regional line sharing/line splitting collaborative for review and resolution. BellSouth

³ Note that Bell's offer to continue providing DSL to CLEC *resold* lines while refusing to provide DSL to UNE-P customers was rejected by the LPSC because this would allow Bell to dictate the method of entry into the local market.

may petition the Commission for a stay of this requirement upon presentation of evidence regarding substantial operational issues that must be resolved. *Id.* at 113. (emphasis added)

Staff's Final Recommendation, including the above cited passage, was considered by the Commission and adopted with the exception that the Staff was directed to further study the issue of whether BellSouth should be required to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice services. [Order U-22252-E, issued September 21, 2001]. Bell did not contest this Order.

In compliance with the Louisiana Commission's directive, the LPSC Staff published a notice under Docket No. R-26173 requesting comments on the issue of whether "whether BellSouth Telecommunications, Inc. should be required to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice services." Interventions and/or initial comments were received from the following parties: ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom ("DeltaCom"), Xspedius Corporation ("Xspedius"), Cox Louisiana Telecom, L.L.C., d/b/a Cox Communications ("Cox"), NewSouth Communications Corporation ("NewSouth"), Access Integrated Networks, Inc. ("Access"), BellSouth, KMC Telecom, Inc. ("KMC"), and the Southeastern Competitive Carriers Association ("SECCA"). Additional/reply comments were filed by BellSouth, KMC, SECCA and WorldCom. Access, DeltaCom, NewSouth and Xspedius jointly filed reply comments.

After thoroughly reviewing all initial and reply comments, Staff issued a Proposed Recommendation. Thereafter, in accordance with Commission rules, exceptions and replies to the Recommendation were received. BellSouth filed exceptions to the Recommendation; and Reply comments were received from KMC, WorldCom, and SECCA, and jointly from

DeltaCom, Access, NewSouth and Xspedius. Additionally, an informal technical conference was held at which representatives from all of the above parties were present. After full consideration of all Comments filed, as well as the discussions held at the technical conference, Staff issued its Final Recommendation, which reiterated that Staff's Proposed Recommendation, as contained in Docket U-22252-E, and as modified in Docket R-26173, should be adopted. The matter was considered and voted on at the Commission's December 18, 2002 Business and Executive Session.

At all times, as reflected in the Orders, the LPSC continues to state that: ***"The Louisiana Public Service Commission affirms that it does not regulate the rates or pricing of BellSouth's wholesale or retail DSL service."*** Order R-26173 at 14-15; R-26173-A, at 17

At the Commission's March 19, 2003 Business and Executive Session, the Commission unanimously voted to make clarifications to the original Order. The clarifications provided that:

1. BellSouth is to continue to provide its wholesale and retail DSL service to customers who choose to switch voice services to a competitive local exchange carrier utilizing the Unbundled Network Element Platform. As stated in Order R-26173, this requirement likewise applies to CLEC voice customers who subsequently choose to receive BellSouth's wholesale or retail DSL service. Should BellSouth intend to offer its DSL service in the latter scenario over a separate line/loop, it shall file a proposal for consideration by the Commission no later than May 1, 2003. Such alternative offering, if proposed, shall not discriminate against that class of voice customers. The filing of such proposal shall not delay implementation of the Order or suspend BellSouth's current obligation to provide DSL service over the UNE-P.
2. The Commission affirms that it does not regulate the rates or pricing of BellSouth's wholesale or retail DSL service and does not establish any pricing for BellSouth's DSL in Order R-26173. BellSouth continues to have the flexibility under this Order to establish the price for its DSL services and offer discounts off of the established DSL price to its customers who choose packaged service offerings. (Example: BellSouth Complete Choice and FastAccess Service). Once BellSouth establishes its price for DSL service, however, BellSouth shall not impose any additional charges for its wholesale or retail DSL service on consumers based on their choice of local voice service provider. Nothing herein shall prevent the Commission from investigating claims of anti-competitive or discriminatory pricing or practices, or

violations of the Commission's Regulations for Competition in the Local Telecommunications Market.

3. The Order currently requires BellSouth to provide DSL over both the UNE-P and UNE loops. However, in light of the testimony of the facilities-based CLECs in this proceeding that they do not intend to have BellSouth provide DSL over their UNE loops, but intend to offer the consumers both voice and data services, the Commission is willing to clarify its Order. Accordingly, BellSouth is ordered to provide for a seamless transition without disconnection of consumers' voice and DSL service to the CLECs' voice and data services. BellSouth shall not require the disconnection of its wholesale or retail DSL service prior to the consumers' transition of voice and data service to that of the CLECs. BellSouth shall provide and the CLECs may provide the Commission a proposed performance measure that ensures a seamless transition of voice and data service occurs when an end-user changes voice and data service from BellSouth to a facilities-based CLEC that chooses to provide its own voice and data services to an end-user over a UNE loop no later than May 1, 2003. That measure will be included in the docket U-22252-C 6 month performance review. The filing of such proposal shall not delay implementation of the Order or suspend BellSouth's current obligation to provide DSL service over the UNE-P or to provide for the seamless transition, without disconnection, of a consumer's voice and DSL service to the CLECs' voice and data services.
4. Order R-26173 became effective on January 24, 2003. However, the Commission clarifies that BellSouth shall have until June 1, 2003, to fully implement the requirements of the Order.

The LPSC maintains that its Orders are consistent with the Act and Louisiana law. As a matter of fact, as further shown herein, the Orders specifically mandate that CLECs must pay for the entire loop, and may not charge BellSouth for the use of the high frequency portion of the loop. This protects the incumbent and does not provide disincentives for further development of broadband investment as alleged by Bell. Thus, while respecting the regulatory boundaries preserved for this Commission, the LPSC Orders promote local competition without discouraging deployment of broadband.

Bell has specifically requested that this Commission find three things, all of which will be addressed and refuted in these comments:

1. Under the TRO and other Commission determinations, that state commissions are preempted under 47 U.S.C. §251(d)(3) as well as other statutory provisions from requiring that Bell provide DSL-based services to CLEC UNE voice customers.
2. That this Commission's determination that interstate information services should remain free from regulation preempts state commission attempts to require BellSouth to provide DSL-based Internet access to CLEC UNE voice customers.
3. This Commission's exclusive jurisdiction over interstate telecommunications preempts state commission decisions purporting to govern the terms under which BellSouth provides its federally tariffed wholesale DSL transmission either by itself or as a component of BellSouth's DSL-based Internet access service. [BellSouth Emergency Request for Declaratory Ruling at 4-5].

These requests have been cleverly crafted to convince the FCC that state commissions are attempting to encroach on its regulation of interstate telecommunications and information services. This is absolutely not the case. The LPSC carefully considered Bell's practices in two dockets and specifically found that these practices had serious negative effects on local competition in the telecommunications market contrary to current LPSC Orders (specifically its Local Competition Regulations) and the Act. Thus the LPSC pursuant to its authority to regulate local telecommunications services passed these Orders.

II. ARGUMENT

A. The LPSC's Orders Insure Competition in the Local Voice Market and are Entirely Consistent with the FCC's Triennial Review Order

In the Triennial Review Order ("TRO"), this Commission reaffirmed its deference to state commission's rules and regulations, provided of course those regulations are consistent with 47 U.S.C. 251(d)(3); *Triennial Review Order*, 18 F.C.C.R. 16978 ¶180. As stated in § 251(d)(3), "In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State Commission that...(b) is consistent with the requirements of this section."

A fundamental policy advanced by the Louisiana Commission, consistent with the Act, is the promotion of competition in the local telecommunications market. In furtherance of this important policy, the Commission adopted its Local Competition Regulations, as most recently amended by LPSC General Order dated July 24, 2002.⁴ Attachment "B" to that Order contains the actual Local Competition Regulations in their current form. The preamble to said regulations provides as follows,

Through the development of effective competition, which promotes the accessibility of new and innovative services at non-discriminatory prices consumers can and are willing to pay, and which results in wider deployment of existing services at competitive prices, the public interest will be promoted.

Further, the stated policy of said regulations, as contained in Section 201 thereof, is

(T)he Louisiana Public Service Commission hereby finds, determines, and declares that the promotion of competition in all local telecommunications markets in Louisiana is in the public interest.

⁴ It should be noted that the LPSC's Order refers to the April 5, 2000 General Order and associated regulations. However, the July 24, 2002 General Order in no way modifies the provisions applicable here.

By way of its filing, BellSouth has attempted to convince this Commission that the LPSC's decisions in Orders R-26173 and R-26173-A, enacted pursuant to the above policy to promote competition in the local telecommunication market, encroach on an area of law exclusively within this Commission's jurisdiction. This could not be further from the truth. The LPSC's Orders are clear in their goal- the prevention of anti-competitive behavior of BellSouth that has a detrimental affect on competition in the local telecommunications market in Louisiana. Furthermore, the Orders are entirely consistent with § 251(d)(3) of the Act and the TRO, and do not regulate interstate access services. As stated herein, the LPSC was clear in its pronouncement that it possesses no jurisdiction over said services. However, there is no dispute that the LPSC possesses the authority to promote competition in the local telecommunications market. Accordingly, the LPSC Orders are consistent with the Act and are not preempted.

In the TRO, this Commission reaffirmed its deference to state commission regulations and rules provided such rules were consistent with 47 USC 251(d)(3).⁵ As stated in section 251(d)(3), "[i]n prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order or policy of a state commission that (b) is consistent with the requirements of this section." The Commission Orders specifically recognize that the LPSC has a long standing policy of promoting competition in the local telecom market, consistent with the fundamental goals of the Telecom Act. Despite Bell's arguments to the contrary, the LPSC's decision is entirely consistent with the Act and promotes the same policy goals espoused in the TRO.

In its simplest terms, the LPSC's decision requires Bell to continue to make available its DSL service to an end-user served by a CLEC and the CLEC is specifically precluded from

⁵ *Triennial Review Order*, 18 F.C.C.R. 16978 ¶180.

charging Bell for the HFPL. Order R-26173-A, at 14. Over the objections of Intervenor (the CLECs), the Commission required that the voice CLEC must purchase the entire UNE loop at Commission-established rates, and may not charge Bell for the use of the high frequency portion of the loop. In turn, Bell is free to price the DSL service to the end user as it sees fit, provided such prices are not anti-competitive. *Id.* at 17. Nevertheless, BST claims that such a requirements effectively result in the creation of a new UNE. In fact, the LPSC specifically avoided such a result when, in spite of requests from the Intervenor to allow them to charge Bell, such requests were denied. See Staff Recommendations in Dockets U-22252-E (State 271) and R-26173.⁶ Thus, the Louisiana Commission's action does not go to the lengths suggested by BellSouth and is consequently consistent with the TRO.

In addition to the fact that the primary policy of continuing to promote competition in the local voice market has been served and protected by the requirements that Bell disputes, the Louisiana Commission's decision furthers this Commission's specific goal of encouraging investment in the Broadband market as well. No disincentives to investment are created for the CLEC. Indeed, the CLEC is purchasing the *entire loop*, despite the fact that it is only using the low frequency portion while Bell is using the high frequency portion at no cost to Bell! As stated by this Commission "rules requiring line sharing may skew competitive LECs' incentives toward providing a broad-band only service to mass-market customers rather than voice only service." *Triennial Review Order*, 18 F.C.C.R. 16978 ¶261. What the LPSC's decision accomplishes, albeit crafted prior to the issuance of the TRO, is to protect CLECs choosing to offer a voice-only service from the anticompetitive actions of the ILEC. Additionally, by prohibiting the charging of Bell for the HFPL (and thus, lowering the loop cost) the LPSC has

⁶ Proposed Recommendation, attached as Exhibit E..

further encouraged LECs partnering with DLECs in Line Splitting arrangements in order to recoup line costs. Bell also attempts to argue that one statement made by this Commission in para 251 of the TRO precludes state commissions from prohibiting the anticompetitive behavior such as that taken by Bell. Bell receives no deference in the interpretation of FCC rules. Moreover, the statement made was in connection with this Commission's justification for phasing out the requirements of the Line Sharing Order (see ¶261) and in no way condoned the ILEC's practices, or suggested that state commissions would be precluded from acting upon finding that such behavior resulted in creating a barrier to entry to the local market.

Further evidence that no disincentives to invest in Broadband have been created by the LPSC and other orders, is Bell's own admission that it has continued to deploy DSL in Louisiana while at the same time complying with the LPSC's Order. [Tr. December 17, 2003 Business & Executive Session, pp. 143-44]⁷ (See also *BellSouth, supra*, in which the Federal District Court specifically points out that Bell was also continuing to build broadband network into rural markets in Kentucky when standard business case analysis would not support such an investment. *BellSouth, supra*, at 7, fn3). According to Bell, it continues to deploy DSL at such a rate in Louisiana that it expects all Louisiana Central Offices (Wire Centers) to be DSL Capable by the third quarter 2004. Also, the record of the proceedings held before the Louisiana Commission contains substantial evidence of Bell's continued increase in market share for DSL.⁸ Clearly Bell has suffered no disincentives to invest and deploy Broadband technology as a result

⁷ Attached hereto as Exhibit F.

⁸ Access Comments, p. 4 in LPSC Docket R-26173 that Bell has tripled its DSL customer base from 2001 to 2001 up 188% (citing Jan. 4, 2003 BellSouth Press Release).

of these Orders. Again, to the contrary, the LPSC took great measures to ensure that this did not happen.⁹

B. State Commission Decisions are Neither Contrary to, Nor Preempted by, Decisions of this Commission

These decisions are neither contrary to nor preempted by the Act. It is important to keep in mind that this Commission recognized in its TRO that “state interconnection and access regulations must ‘substantially prevent’ the implementation of the federal regime to be precluded and that ‘merely an inconsistency’ between a state regulation and a Commission regulation was not sufficient for Commission preemption under section 251(d)(3).” *Triennial Review Order*, 18 F.C.C.R. 16978 ¶192, fn 611, citing *Iowa Utilities Board v. FCC*, 120 F. 3d 753, 806 (8th Cir. 1997), *cert. gr.* 522 U.S. 1089, 118 S.Ct. 879, 139 L.Ed.2d 867 (1998), *aff. pt., rev pt.* 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999). This Commission also specifically recognizes the role preserved to the states in section 251(d)(3). *Id.* The rules in question, especially those of the LPSC, do not in any way prevent the implementation to the federal regime, much less “substantially prevent” it, nor are they inconsistent with Commission regulations. The rules are entirely consistent with the policies set forth in the Act and further implemented by this Commission.

A long line of cases regarding preemption in the telecommunications area of regulation, some of which have been previously mentioned, were referred to in *BellSouth Telecom., Inc. v. Cinergy*, 2003 WL 23139419 (E.D. Ky. Dec. 29, 2003). The Court quoted the Supreme Court stating that “the Act cannot divide the world of domestic telephone service ‘neatly into two hemispheres,’ one consisting of interstate service, over which the FCC has plenary authority, and

⁹ The LPSC would further note that Bell has continuously subjected itself to the jurisdiction of the Louisiana Commission for deployment purposes.

the other consisting of intrastate service, over which the states retain exclusive jurisdiction.” *Id.* at 5. The Court also pointed out that “when a state law is not expressly preempted, courts must begin with the presumption that the law is valid.” *Id.* at 6. Finally, the Court recognized that “the Act permits a great deal of state commission involvement in the new regime it sets up for the operation of local telecommunications markets, ‘as long as state commission regulations are consistent with the Act.” *Id.* The Court also referred to the Act when it found that the state’s regulations did not “‘substantially prevent’ the implementation of federal statutory requirements. The PSC’s order [stated the court] challenged here by BellSouth, embodies just such a request.” *Id.*, citing 47 U.S.C. §251(D)(3)(c). The Court also explored the concept of “cooperative federalism” in which the efforts of federal and state agencies are “harmonizing” in nature. *Id.* Thus, the Court found that the Kentucky order was valid and not preempted.

In the case of *Michigan Bell, supra*, the Sixth Circuit Federal Court of Appeals addressed possible preemption arguments made by the ILEC Ameritech in connection with its review of a decision of the Michigan Public Service Commission (“MPSC”). While affirming the decision of the MPSC, the court examined the lengthy regulatory history giving rise to the claim in *Michigan Bell*. First and foremost, stated the court, states are not allowed to violate the Act’s purpose, which is “ending local telephone company monopolies and promoting competition in the local telephone markets.” 323 F.3d at 351. Although federal courts oversee the cooperation between federal and state agencies in the implementation of the Act, state commissions are given the ability to use, “...their expertise in telecommunications and the needs of the local market. *Id.* at 352. The court recognized that, “...state commissions, arbitration panels, and administrative law judges have a refined expertise in telecommunications matters that come infrequently before the regional federal courts.” In fact, “intricate matters, such as rate-setting and determining the

feasibility of regulatory mandates, lie beyond the core of judicial competence.” *Id.* at 352-3, quoting Philip J. Weiser, *Federal Common Law, Cooperative Federalism, and the Enforcement of the Telecom Act*, 76 N.Y.U. L.Rev. 1692, 1724 (2001) (emphasis added). Any state regulation or order regarding access and interconnection, “...will be upheld, as long is (sic) it meets federal requirements.” *Id.* at 353.

The court acknowledged that it must interpret Michigan state law in concert with federal law. In doing so, it adopted an arbitrary and capricious standard on reviewing the MPSC’s resolution of state law issues. Congress preserved state laws which existed and furthered the goals of local interconnection and competition at the time of the Act’s promulgation. Citing this Commission, the *Michigan Bell* court found that, “as long as state regulations do not prevent a carrier from taking advantage of sections 251 and 252 of the Act, state regulations are not preempted.” *Id.* at 359. As a result, the Michigan laws in question in this case were not preempted by federal law, as set forth in the Act.

Just as in *Michigan Bell, supra* and *BellSouth, supra*, the Louisiana rule is also consistent with the Act and Louisiana Law. The concept of “cooperative federalism” is clearly present in these instances. As explained herein and demonstrated in the Order, the requirements imposed on Bell are neither directly contrary to federal law, nor do they create disincentives to investment in broadband. The LPSC has specifically recognized its lack of jurisdiction to regulate DSL and it also took great steps to assure that its rules were fair and equally applied. The two main reasons relied on by the court in *BellSouth, supra*, when it declined to find preemption, also apply to the LPSC Order. To use the Court’s language, the Order establishes a relatively modest, “condition for a local exchange carrier so as to ameliorate a chilling effect on competition for

local telecommunications regulated by the Commission,”¹⁰ while at the same time, assuring that no disincentives are created to discourage investment in, and development of new and innovative broadband facilities. *Id.* at 6.

Bell also asserts that state commissions have no authority to regulate the “terms and conditions of service” offered under a federal tariff, citing a number of cases. Bell Petition at 27. The LPSC rules have nothing to do with regulating terms of conditions of DSL service but rather the refusal to offer the service with the effect of compromising local competition. Moreover, the cases cited by Bell all apply to rates or agreements affecting rates and thus are inapplicable. (*See Pub. Serv. Co. of New Hampshire v. Patch*, 167 F.3d 29 (1st Cir. 1998), *cert. den.* 526 U.S. 1066, 119 S.Ct. 1458, 143 L.Ed.2d 544 (1999) (involving ordering a utility to reduce rates); *Ivy Broadcasting Co. v. AT&T Co.*, 391 F.2d 486 (2nd Cir. 1968) (involving rates); *Appalachian Power Co. v. Pub. Serv. Comm’n of West Virginia*, 812 F.2d 898 (4th Cir. 1987) (involving “rates or agreements affecting rates”); *Duke Energy Trading & Mktg., L.L.C. v. Davis*, 267 F.3d 1042 (9th Cir. 2001), *cert. den.* 535 U.S. 1112, 122 S.Ct. 2327, 153 L.Ed.2d 159 (2002) (governor’s order changing rate schedule); *Entergy La., Inc. v. Louisiana Pub. Serv. Comm’n*, 123 S.Ct. 2050, 156 L.Ed.2d 34 (2003) (involving allocation electric generation costs among the operating companies). None of these decisions involve actions taken by a regulated entity, the direct results of which clearly violate federal and state law and thus, are not applicable to this case.

C. The Issues in this Proceeding Were Not Specifically Disposed of in the TRO Proceedings

Bell claims that these same issues were raised and addressed in the TRO Proceedings stating that CompTel requested that the low frequency portion of the loop be a separate UNE to

¹⁰ Although it places prohibitions on Bell, it also prohibits the CLEC from charging Bell for the use of the high frequency portion of the loop.

which the FCC disagreed deciding that the low frequency portion was not to be separately unbundled. Bell Petition at 12-13. The LPSC decision is consistent with this Commission's decision as the LPSC also determined that no additional unbundling was required, by simply preserving the status quo. Bell somehow interprets this Commission's language addressing situations where the customer ceases purchasing voice service from the incumbent LEC, to mean that state commissions are preempted from enacting certain rules regarding such incumbent's actions. Bell refers to ¶269 of the TRO in an effort to demonstrate that state commissions may not require the ILEC to continue offering its DSL service to non-ILEC voice customers. In ¶269 This Commission states that "[I]n the event that the customer ceases purchasing voice service from the incumbent LEC, either the new voice provider or the xDSL provider, or both, must purchase the full stand-alone loop to continue providing xDSL service." 18 F.C.C.R. at 17140-41 ¶269. However, this statement must be read in context with the proceeding language which merely states that unbundling of the low frequency portion of the loop is not *necessary* to address the impairment faced by requesting carriers because, as stated the FCC, "we continue (through our line splitting rules) to permit a narrowband service-only competitive LEC to take full advantage of an unbundled loop's capabilities by partnering with a second competitive LEC that will offer xDSL service." Id at 17134, ¶259. In other words, the intent was to protect CLECs from impairment while preserving the incentives to invest on the part of the ILECs. The LPSC Order, if anything, promotes this Commission's concerns as the CLEC must still pay for the entire loop, thus no disincentive is created. In fact, Bell has the competitive advantage since it is getting the high frequency portion of the loop for free. If a CLEC were allowed to charge Bell (which it is not), then one could argue that a new UNE is created. However, in this instance, Bell is protected and investment is encouraged, thereby promoting all policies espoused by this

Commission. It is also significant to note that Bell specifically states that it has no objection to, and will continue to provide, DSL to a non-Bell voice customer if the CLEC is a reseller. The LPSC found that if it were to allow Bell to refuse to provide DSL to a non-Bell voice customer over UNE-P while providing to resale customers, this would equate to granting Bell the right to dictate method of entry by a CLEC into the local market which is indeed prohibited by the ACT. Bell's eagerness to continue to provide over resold lines but not over UNE leaves suspect its intentions.

BellSouth states that ILECs have no obligation to continue to provide DSL services to CLEC UNE voice customers. Bell Petition at 14. Bell, by way of this argument, is essentially attempting to apply this Commission's prohibition of the creation of a new UNE (which, as stated *infra*, the LPSC's Orders do not result in such) to the LPSC's rectification of an anticompetitive policy. Additionally, the fact that Bell has stated that it would continue to provide DSL to resale customers was found by this Commission to be improper as essentially BellSouth was attempting to dictate the method of entry for CLECs in the local market. Bell also argues that CLECs should be encouraged to exploit the voice and data capabilities of the loop, and that readopting line sharing would discourage line splitting. Bell Petition, at 16, citing TRO 17135 ¶261. The LPSC rules do not discourage such relationships.

The LPSC decisions (and most likely those of the other PUCs cited by Bell) do not undermine federal incentives and are not preempted. These decisions are entirely consistent with this Commission's incentives. Moreover, the court in *Iowa Utilities Board v. F.C.C.*, 120 F.3d 753, 806 (8th Cir. 1997) stated: "It is entirely possible for a state interconnection or access regulation, order, or policy to vary from a specific FCC regulation and yet be consistent with the overarching terms of section 251 and not substantially prevent the implementation of section 251

or Part II. In this circumstance, subsection 251(d)(3) would prevent the FCC from preempting such a state rule, even though it differed from an FCC regulation.” This notwithstanding, the LPSC does not believe BellSouth has adequately shown that either Order R-26173 or R-26173-A vary in any way from this Commission’s regulations. However, even if it is found they do in some way vary, they are entirely consistent with this Commission’s, and the LPSC’s, policy to promote competition in the local telecommunications market. Accordingly, they must be upheld, as this Commission has recognized the standard set forth by *Iowa Utilities Board* as applicable to State action.

D. Regulation of Information Services

Bell attempts to argue that the *Computer Inquiry* proceedings mandate that the states must respect a “hands off” policy with respect to interstate information services and that these rules violate this policy. Bell Petition, at 17. Again, the LPSC is not regulating interstate services, but rather the anti-competitive behavior and effect that Bell’s tactics have on local competition. Also, BellSouth’s cited authority was vacated in this Commission’s *Computer III* order,¹¹ which was further vacated in part in *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990).¹² It was expressly recognized that any attempt to broadly preempt state regulation could only be affirmed if the FCC could show that “its entire preemption order ... is narrowly tailored to preempt *only* such state regulations as would negate valid FCC regulatory goals.” *Id.* at 1243. Furthermore, in a reconsideration order of BellSouth’s cited authority, this Commission

¹¹ See Report and Order, *In the Matter of: Amendment of Section 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry)*, 104 F.C.C.2d 958 (1986).

¹² *California v. F.C.C.*, 905 F.2d 1217 (9th Cir. 1990); *California v. F.C.C.*, 4 F.3d 1505 (9th Cir. 1993); *California v. F.C.C.*, 39 F.3d 919 (9th Cir. 1994).

expressly sought the assistance of state regulators in insuring fair competition,¹³ and thus the LPSC's order is in compliance with that policy.

Bell also argues that this Commission and federal courts have preempted state decisions that undermined federal policy as to enhanced services. While this statement may be generally true, it in no way proves that such is the case in this instance. As previously stated, the Act cannot divide the world of domestic telephone service "neatly into two hemispheres," and "the realities of technology and economics belie such a clean parceling of responsibility." *BellSouth, supra* at 5. And, stated the court, this Commission "has not[ed] that 'state commission authority over interconnection agreements pursuant to Section 252 extends to both interstate and intrastate matters.'" *Id.* As a result, there is no clear determination that interstate access is a purely interstate service. Consequently, the Orders of the LPSC, while possibly affecting information services, are not regulating them.

In *Michigan Bell, supra*, the Sixth Circuit recognized that the state commissions are allowed a great deal of involvement in the operation of local telecommunications markets "as long as state commission regulations are consistent with the Act." *Id.* at 359. The Court also pointed out that "Congress has made clear that States are not ousted from playing a role in the development of competitive telecommunications markets." Finally, the Court referred to this Commission when it stated that "[a]ccording to the FCC, as long as state regulations do not prevent a carrier from taking advantage of sections 251 and 252 of the Act, state regulations are not preempted." *Id.* As a result, it is clear that the paramount and overriding policy has been to promote local competition, and allow CLECs to take advantage of the benefits of the Act.

¹³ Memorandum Opinion and Order on Further Reconsideration, *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 88 F.C.C.2d 512, 550, ¶ 107 (1981).

Again, the Commission's rules are entirely consistent with this policy while providing the additional benefit of avoiding any disincentives to investment in the Broadband market.


As previously discussed herein, as with the wholesale regulations, the requirement that Bell may not refuse to provide FastAccess service to CLEC voice customers over UNE-P is consistent with the Act and Louisiana Law. The Louisiana Commission is not regulating interstate or information services but rather promoting and preserving local competition pursuant to state and federal law. In fact, it only requires BST to continue to make available its DSL services to a customer who switches voice providers. There is no regulation of the services themselves. BST retains control over its pricing flexibility, unbundling flexibility, and the like.

III. CONCLUSION

For the above stated reasons, the Louisiana Commission submits that its decisions rendered in Orders R-26173 and R-26173-A are entirely consistent with the Triennial Review Order and applicable Federal regulations. The LPSC's Orders in question achieve an important goal of promoting voice competition in the local telecommunications market, while preserving and promoting incentives for broadband deployment and thus furthering the fundamental goals of the Telecommunications Act of 1996 and this Commission's decisions, specifically the recently released TRO. Accordingly, they are not only not subjected to a preemption argument, but are specifically protected as a reasonable exercise of state jurisdiction enacted pursuant to 47

USC 251(d)(3). Accordingly, BellSouth's request for preemption of this State's actions should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eve Kahao Gonzalez', written over a horizontal line.

Eve Kahao Gonzalez, Bar Roll # 18231
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CERTIFICATE OF SERVICE

I, Eve Kahao Gonzalez, certify that a copy of the foregoing Comments of the Louisiana Public Service Commission were served on this 30th day of January 2004 by first-class, U.S. Mail, postage prepaid, to the following persons.



Eve Kahao Gonzalez

Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
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LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

LOUISIANA PUBLIC SERVICE COMMISSION EX PARTE

Docket No. R-26438, Louisiana Public Service Commission, ex parte. In re: Possible Amendments to the Louisiana Public Service Commission's Regulations for Competition in the Local Telecommunication Market, Section 801. (General Order dated April 5, 2000).

(Decided at Business and Executive Session held July 17, 2002)

(Amends and supersedes Section 801 A. of Appendix B to the April 5, 2000 General Order)

BACKGROUND

This rulemaking docket was initiated by the Staff of the Louisiana Public Service Commission ("LPSC", "Commission") in response to a growing problem concerning the refusals of some Local Exchange Carrier ("LEC") to port local numbers to other LECs, despite the request to port otherwise being valid. Recent disputes have shown that some LECs will refuse to port a number when the LEC has a contractual relationship in existence with an end-user, who (end-user) then opts to change service to another LEC. Rather than port the number, the originating LEC "holds" the number pending resolution of the dispute. Similarly, refusals to port have occurred when a LEC's end-user elects to change service to another LEC despite the end-users' current account being in arrears. Although the relevant LPSC and FCC regulations appear to be clear on the issue of porting numbers, the growing number of complaints would suggest otherwise. In order to ensure the LPSC's regulations were clear on the issue, Staff specifically sought comments on the following statement in the April 19, 2002 Bulletin: "Under what circumstances, if any, should a TSP be allowed to refuse to port a number to another TSP?"

Following review of initial comments received, Staff issued its Initial Recommendation on June 3, 2002. Reply comments to the Initial Recommendation were likewise considered prior to Staff issuing its Final Recommendation.

JURISDICTION

As stated in Article IV § 21 of the Louisiana Constitution of 1974, the Commission has the authority to:

"regulate all common carriers and public utilities and has all other regulatory authority as provided by law. The Commission shall adopt and enforce reasonable rules, regulations and procedures which are necessary for the discharge of its duties including other powers and duties as provided by law."

Pursuant to its constitutional authority, the Commission adopted the Regulations for Competition in the Local Telecommunications Market ("Local Competition Regulations")¹, as most recently amended by the April 5, 2000 General Order ("General Order"). Section 801 A. of "Appendix B" to the General Order provides as follows:

TSPs providing local telecommunications services shall provide number portability that ensures that an end-user customer of local telecommunications services, while at the same location, shall be able to retain an existing telephone number without impairing the quality, reliability, or convenience of service when changing from one provider of local services to another. The type of number portability contemplated by this rule is service provider portability and not location portability.

¹ The actual Regulations are contained in "Appendix B" to the General Order.

DISCUSSION

The general consensus taken from the comments received suggest the Local Competition Regulations, as well as relevant FCC regulations and orders, prohibit a LEC from refusing to port a number upon receipt of a valid request. While there is no express prohibition against withholding the porting of numbers under the LPSC's regulations, there is an affirmative obligation (to port) under federal law. Staff agrees an affirmative obligation exists under federal law, and is of the further opinion the same affirmative obligation exists under Section 801. After considering the reply comments received, Staff clarified its recommendation to ensure no exceptions to the rule are allowed and that the rule applies only when a valid request is received to port the number. Further, Staff determined that certain additional issues raised therein would be considered in other dockets currently being reviewed by Staff.

CONCLUSION

After careful consideration of the initial and reply comments filed by the parties, and all relevant LPSC and Federal regulations, Staff recommended Section 801 A. of the Regulations for Competition in the Local Telecommunications Market be clarified to specifically provide that under no circumstances may a LEC refuse a valid request to port a number, as outlined in the highlighted text:

Section 801 A. TSPs providing local telecommunications services shall provide number portability, upon receipt of a valid request, that ensures that an end-user customer of local telecommunications services, while at the same location, shall be able to retain an existing telephone number without impairing the quality, reliability, or convenience of service when changing from one provider of local services to another. There are no exceptions to this requirement. In particular, no TSP shall withhold the porting of an end-users number to another TSP because of unpaid bills or contractual arrangement. The type of number portability contemplated by this rule is service provider portability and not location portability. Failure to timely port a number subjects the refusing TSP to the fines and penalties as contained in Sections 301 J, K & L of these regulations.

Staff's Final Recommendation was considered by the Commission at its July 17, 2002 Business and Executive Session. On Motion of Commissioner Dixon, seconded by Commissioner Field, and unanimously adopted, the Commission voted to accept Staff's Final Recommendation.

IT IS THEREFORE ORDERED THAT:

1. Staff's modifications to Section 801 A. of the Regulations, as set forth in "Appendix A" to this Order, shall be adopted.
2. The Regulations for Competition in the Local Telecommunications Market are hereby amended to reflect the modifications to Section 801 A., as set forth in "Appendix B" attached hereto.
3. This Order shall be effective immediately.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
July 24, 2002

/S/ JACK "JAY" A. BLOSSMAN
DISTRICT I
CHAIRMAN JACK "JAY" A. BLOSSMAN

/S/ DON OWEN
DISTRICT V
VICE-CHAIRMAN DON OWEN

/S/ IRMA MUSE DIXON
DISTRICT III
COMMISSIONER IRMA MUSE DIXON

/S/ C. DALE SITTIG
DISTRICT IV
COMMISSIONER C. DALE SITTIG

LAWRENCE C. ST. BLANC
SECRETARY

/S/ JAMES M. FIELD
DISTRICT II
COMMISSIONER JAMES M. FIELD

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

**LOUISIANA PUBLIC SERVICE COMMISSION
EX PARTE**

In re: Regulations for Competition in the Local Telecommunications Market

(As amended at the Business and Executive Session held July 17, 2002)

APPENDIX "B"

LOUISIANA PUBLIC SERVICE COMMISSION

**REGULATIONS FOR COMPETITION IN
THE LOCAL TELECOMMUNICATIONS MARKET**

**LOUISIANA PUBLIC SERVICE COMMISSION
REGULATIONS FOR COMPETITION IN
THE LOCAL TELECOMMUNICATIONS MARKET**

(AS AMENDED 7/17/02)

PREAMBLE

The Louisiana Public Service Commission hereby promulgates the following regulations (the "Regulations") to foster the transition from monopoly to competitive local telecommunications markets in Louisiana. The Commission imposes these Regulations for competition within local service areas in order to encourage competitive entry, preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers while ensuring that the rates charged and services rendered by telecommunications services providers are just and reasonable.

The Commission recognizes that, given current local telecommunications markets, competition in every segment of these markets will take time to develop. It is likely that the introduction of competitive services will occur asymmetrically, with new entrants initially targeting high volume, heavily populated urban areas and other selected high-profit areas, and therefore, the benefits resulting from competition will be seen first in those areas. However, it is the policy of the Commission that all Louisiana consumers should benefit from competition. Although a limited exemption is proposed for incumbent local exchange carriers with 100,000 access lines or less in Louisiana, the Commission encourages competition throughout Louisiana.

These Regulations are designed to ensure that Louisiana consumers in the aggregate benefit from competition. The Commission grants telecommunications services providers the opportunity to compete in local telecommunications markets under the condition that the consumers of Louisiana benefit by having greater choices among telecommunications products, prices and providers. Through the development of effective competition, which promotes the accessibility of new and innovative services at non-discriminatory prices consumers can and are willing to pay, and which results in wider deployment of existing services at competitive prices, the public interest will be promoted.

SECTION 101. Definitions

1. Basic Local Service - those telecommunications services required to provide residential and single-line business customers with each of the items comprising the definition of Universal Service as specified in Commission General Order dated May 22, 1995.
2. Basic Services - for purposes of the Price Plan and ILECs regulated thereunder, the category of services required to provide basic local service to residential and single line business customers, including all services itemized in the Price Plan.
3. Bona Fide Request - a request to a telecommunications services provider that demonstrates a good faith showing by the requesting party that it intends to purchase the services requested within ninety (90) days of the date of the request.
4. Central Office - a facility within a telecommunications network where calls are switched and which contains all the necessary equipment, operating arrangements and interface points for terminating and interconnecting facilities such as subscribers' lines and interoffice trunks.
5. Commission - the Louisiana Public Service Commission.
6. Commercial Mobile Radio Service (CMRS) - a mobile service that is: (a)(1) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) an interconnected service; and (3) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) the functional equivalent of such a mobile service described in paragraph (a) of this definition. 47 CFR § 20.3, as amended. CMRS includes "Radio Common Carriers" as that term is defined and used in La. R.S. § 45:1500 *et seq.*
7. Commercial Mobile Radio Service Provider - any person or entity engaged in the provision of a service that is a commercial mobile radio service. CMRS Provider includes "Radio Common Carriers" as that term is defined and used in La. R.S. § 45:1500 *et seq.*
8. Competitive Access Provider (CAP) - a telecommunications services provider offering and/or providing only exchange access services or private line services in a local service area.
9. Competitive Local Exchange Carrier (CLEC) - a telecommunications services provider, except a CAP, offering and/or providing local telecommunications services in competition with an ILEC.
10. Essential Telecommunications Carrier (ETC) - the telecommunications services provider designated by the Commission to be the obligated provider of basic local service within a particular local service area (formerly referred to as the Carrier-of-Last-Resort).
11. Exchange Access Services - the provision of switched or dedicated telecommunications services which connect an end-user to an interexchange carrier for the purpose of originating or terminating interexchange telecommunications. These services are provided by facilities in an exchange area for the transmission, switching, or routing of interexchange telecommunications originating or terminating within the exchange area.
12. Exchange Area - a geographic area established by a telecommunications services provider consisting of one or more central offices together with associated facilities used in furnishing local telecommunications services within the area in which telecommunications services and rates are the same.
13. Facilities Based Telecommunications Services Provider - a telecommunications services provider which has deployed and is using its own significant telecommunications equipment or facilities within a particular geographic area in Louisiana to serve its Louisiana subscribers. A facilities based provider may offer services exclusively over its own facilities, or partially over its own facilities and partially through the resale of ILEC and/or CLEC wholesale offerings.
14. Gross Domestic Product-Price Index (GDP-PI) - the total value of all currently produced goods and services in the United States during any particular time period as is calculated by the United States Bureau of Economic Analysis of the Department of Commerce.

15. Incumbent Local Exchange Carrier (ILEC) - telecommunications services provider that is the incumbent and historical wireline provider of local telecommunications services within a local service area as of the effective date of these Regulations, and any intrastate regulated affiliate or successor to such entity which is engaged in the provisioning of local telecommunications services.

16. Interconnection - the physical linking of networks, including signaling facilities, of telecommunications service providers that provides the reciprocal ability to handoff calls from customers on one network to customers on another provider's network in a manner that is transparent to customers, and which allows one provider to utilize unbundled basic network functions of another provider for the purpose of providing an end-to-end service to end users. Interconnection can be achieved at different points on the network.

17. Interconnection Services - for purposes of Price Plan and ILECs regulated thereunder, the category of services that allow telecommunications services providers to interconnect to an incumbent local exchange carrier's network to originate or terminate telecommunications services, including all services itemized in the Price Plan. For other purposes, those services offered by telecommunications services providers to other providers to interconnect networks in order to originate or terminate telecommunications traffic, and to interconnect at all unbundled points on another provider's network.

18. Interexchange Carrier - a telecommunications services provider of interLATA telecommunications services.

19. Interexchange Telecommunications - telecommunications traffic that originates in one exchange area and terminates in a different exchange area regardless of the service or facilities used to originate and terminate traffic.

20. Intraexchange Telecommunications - telecommunications traffic that originates and terminates within the same exchange area regardless of the service or facilities used to originate and terminate traffic.

21. LPSC - the Louisiana Public Service Commission.

22. Local Exchange Carrier (LEC) - telecommunications services provider offering and/or providing local telecommunications services.

23. Long Distance - any telephone call to a location outside a local service area. Also called a toll call.

24. Local Service Area - the geographic area in which end users may place telephone calls without incurring toll charges which includes a flat rate calling area. The local service area of a CLEC may be different from the local service area of an ILEC. Nothing in this definition shall preclude the provision of toll service within the expanded Local Optional Service Area as described in Order No. U-17949-N, dated October 18, 1991.

25. Local Telecommunications Services - telecommunications services traditionally provided by an ILEC as a local service, including but not limited to, exchange access services, private line services, basic local services, and public pay phone services.

26. Long Run Incremental Cost - the costs a company would incur (or save) if it increases (or decreases) the level of production of an existing service or group of services. These costs consists of the costs associated with adjusting future production capacity and reflect forward-looking technology and operations methods.

27. Market Trial - a trial involving paying customers that focuses on the collection of primary market research information that could impact the marketing of a product or service, such as customer acceptance of a product or service and/or willingness to pay for a product or service.

28. Mobile Service - a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes: a) both one-way and two-way radio communication services; b) a mobile service which provides a regularly

interacting group of base, mobile, portable, and associated control and relay stations for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and c) any service for which a license is required in a personal communications service pursuant to 47 CFR Part 24. 47 CFR Sect. 20.3, as amended. Mobile Service includes "Radio Common Carriers" as that term is defined and used in La. R.S. § 45:1500 *et seq.*

29. Non-Basic Services - for purposes of the Price Plan and ILECs regulated thereunder, all services not otherwise classified as basic or interconnection services offered by an ILEC. See Appendix A and Appendix B attached.

30. Number Portability - the ability of an end-user customer of local telecommunications services to retain his existing telephone number(s) without impairment of quality, reliability or convenience, when changing from one provider of local telecommunications services to another, as long as the user remains at the same location.

31. Private Line Service - any dedicated point-to-point, or point-to-multi point service for the transmission of any telecommunications services.

32. Private Mobile Radio Service (PMRS) - As defined at 47 CFR § 20.3, as amended.

33. Public Pay Telephone Service Provider - COCOTs as defined in Commission Orders U-16462, U-16462-A through U-16462-G, General Order dated March 30, 1995 and any subsequent Orders, including but not limited to, Orders resulting from Docket No. U-21322.

34. Rate - the price of a service approved by the Commission.

35. Resale - the offering of services, elements, features, functions, and capabilities for sale to competing telecommunications services providers.

36. Reseller - a telecommunications services provider that purchases telecommunications services from another provider for resale to end users for a fee.

37. Small ILEC - an incumbent local exchange carrier that meets the definition of a "rural telephone company" contained in the Communications Act of 1934, as amended.

38. Subscriber List Information - any information (a) identifying the listed names of subscribers of a TSP and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications, and (b) that the TSP or an affiliate has published, caused to be published, or accepted for publication in any directory format.

39. Technical Trial - a trial involving non-paying customers that focuses on assessing the technical capabilities of a new network serving arrangement, including technologies and supporting equipment, and associated supporting systems, such as ordering, billing, provisioning and maintenance systems. Services provisioned pursuant to a technical trial may include new services and/or new ways of providing existing services.

40. Telecommunications- the bi-directional transmission of information of the user's choosing between or among points specified by the user, including voice, data, image, graphics and video, without change in the form or content of the information as sent and received, by means of an electromagnetic and/or fiber optic transmission medium, including all instrumentalities, facilities, apparatus and services (including the collection, storage, forwarding, switching and delivery of such information) essential to such transmission.

41. Telecommunications Directory Publisher (TDP) - any person or entity, including affiliates of an ILEC, engaged in the business of publishing subscriber list information, in any format.

42. Telecommunications Equipment - equipment, other than customer premises equipment, used by a telecommunications services provider to provide telecommunications services including software integral to such equipment.

43. Telecommunications Service - the offering and/or providing of telecommunications for compensation or monetary gain to the public, or to such classes of users as to be effectively available to the public regardless of the facilities used to transmit the telecommunications services.

44. Telecommunications Services Provider (TSP) - a generic term used to refer to any person or entity offering and/or providing telecommunications services for compensation or monetary gain.

45. Toll Call - a call to any location outside the local service area. Also called a long distance call.

46. Total Service Long Run Incremental Cost (TSLRIC) - the total additional cost incurred by a telecommunications services provider to produce the entire quantity of a service, group of services, or basic network functions, given that the telecommunications services provider already provides all of its other services. TSLRIC is based on the least cost, most efficient technology that is capable of being implemented at the time the decision to provide the service is made.

47. Unbundle - disaggregation of a facilities-based telecommunications services provider's network services, including elements, features, functions and capabilities whenever technically feasible at rates as determined by the Commission.

48. Universal Service - as defined by Commission General Order dated May 22, 1995, and any subsequent modifications or amendments thereto.

SECTION 201. Public Interest

A. Based on the complete record before the Commission in this docket, which includes the complete records, evidence and pleadings of Subdocket "D" of Docket U-17949 and the Regulatory Track of Subdocket "E" of Docket U-17949,¹ and considering the present state of the telecommunications market structure, the Louisiana Public Service Commission hereby finds, determines and declares that the promotion of competition in all local telecommunications markets in Louisiana is in the public interest.

B. Because effective competition will not exist in these markets in the short-term but will require a long-term policy enabling competition to develop, the Commission likewise finds, determines, and declares that providing an appropriate regulatory framework and methodology to transition into effective competition is additionally in the public interest.

SECTION 202. Service Areas

A. TSPs are permitted to provide telecommunications services in all historically designated ILEC service areas as described in existing Commission orders as of the effective dates of these Regulations, or in maps, tariffs and rate schedules reviewed and approved by the Commission prior to the effective date of these Regulations, except as provided for in Section 202 (B) with respect to the service area served by Small ILECs.

B. 1. All requests for interconnection made of a Small ILEC for interconnection described in Section 251 (c) of the Communications Act of 1934, as amended ("the Act") shall be made and addressed in accordance with the requirements stated in Section 251 (f)(1) of the Act, and with final Orders of the Federal Communications Commission.

2. Notwithstanding Section 202(B)(1) above, a Small ILEC may petition the

¹ LPSC Order No. U-17949 - Subdocket D, March 2, 1995; and LPSC Order No. U-17949 (Subdocket E), August 22, 1995.

Commission for a suspension or modification of the application of a requirement or requirements found in Sections 251 (b) and 251 (c) of the Act. The Commission shall consider and grant any such petition in accordance with the requirements of Section 251(f)(2) of the Act.

C. For Commission regulatory purposes, a Small ILEC choosing to provision telecommunications services outside its historically designated service area(s) shall segregate the assets, liabilities, revenues and expenses relating to services provisioned in its historically designated service area(s) from those relating to services offered or provided outside its historically designated service area(s). Such Small ILEC's revenues not derived, and expenses not incurred from the Small ILEC's historically designated service area(s) shall not be considered by the Commission for purposes of applying Order No. U-21181, including LECAF funding. Such Small ILEC's traditional ILEC operations shall not cross-subsidize its competitive ventures.

D. If a Small ILEC forms a subsidiary and/or other affiliate entity to provision telecommunications services outside its historically designated service area(s), for Commission regulatory purposes, including the application of Order No. U-21181 and LECAF funding, the Small ILEC shall maintain separate books and accounts which segregate the assets, liabilities, revenues and expenses of the Small ILEC from those of the subsidiary and/or other affiliate entity. The Small ILEC's traditional ILEC operations shall not cross-subsidize the operations of any subsidiary and/or other affiliate entity providing telecommunications services outside the Small ILEC's historically designated service area(s). The Small ILEC shall apply all Commission imputation rules when dealing with its subsidiary and/or other affiliate.

E. An exclusive franchise, license or certificate shall not be issued to any TSP to provide telecommunications services for a particular service or geographic area by the Commission.

SECTION 301. Certification of Telecommunications Services Providers

A. Any TSP desiring to offer telecommunications services is required to apply to the Commission for issuance of a Certificate of Authority. This application process shall not apply to ILECs with regard to their historically designated service areas and to TSPs exclusively provisioning CMRS and/or PMRS. Providers of CMRS and/or PMRS shall continue to register with the Commission.

B. Until modified by state or federal law, or explicit Commission order, operator service providers shall remain subject to the provisions of Order Nos. U-17957 through U-17957-C, and any subsequent orders. Public Pay Telephone Service Providers shall remain subject to the provisions of Order Nos. U-16462 through U-16462-G and any subsequent orders, including General Order dated March 30, 1995.² To the extent that operator service providers and public pay telephone service providers desire to expand their service offerings of telecommunications services beyond those authorized prior to the effective date of these Regulations, such providers must apply to the Commission for authority pursuant to, and agree to be bound by, these Regulations.

C. The Commission, through its Secretary, when in the public interest and subject to and in compliance with the conditions and procedures set forth below, shall grant a Certificate of Authority to an applicant that possesses the requisite managerial, financial and technical abilities to provide telecommunications services. A color-coded Certificate of Authority suitable for framing and display in a TSP's business office will be issued by the Commission. No TSP shall offer or provide telecommunications services to any person or entity prior to obtaining a Certificate of Authority from the Commission.

D. TSPs operating under a Certificate of Authority issued prior to the effective date of these Regulations or, granted pursuant to this Section, or TSPs previously registered with the Commission, are prohibited from providing telecommunications services to or on behalf of an uncertificated TSP that is required to be certificated pursuant to this Section and which is providing telecommunications

² In re: Registration and Certification of Customer-Owned Coin-Operated Telephone Service Providers. See also Docket No. U-21322, which shall consolidate and supersede the cited Orders as applied to public payphone service providers and operator service providers.

services in Louisiana.

E. Each applicant hereunder shall submit to the Secretary of the Commission an original and five (5) copies of its application along with an application fee of \$250.00 to cover the administrative costs of processing the application. The applicant shall also supply each Commissioner with a copy of its application simultaneously therewith. Upon request by the Secretary, and when reasonably feasible, an applicant shall also submit in addition to the original and five copies, a copy of its application on computer disk in a format specified by the Secretary. All applications shall include the following:

1. Legal name, and name under which the applicant intends to do business, mailing and physical addresses of the applicant, and telephone number where the applicant can be reached by the Commission.
2. The names and addresses of the applicant's principal corporate officers.
3. If different from (2) above, the names and addresses of all officers and corporate officers in Louisiana, and the names and addresses of employees responsible for Louisiana operations.
4. Information about the structure of the business organization, and, where applicable, a copy of any articles of incorporation, partnership agreement or by-laws of the applicant. An applicant shall also disclose all affiliate entities offering and/or providing telecommunications services in Louisiana.
5. A certified copy of the applicant's authorization to do business in Louisiana issued by the Secretary of State.
6. The name, address and telephone number of the applicant's Louisiana agent for service of process.
7. Documentation demonstrating managerial, financial and technical abilities, including but not limited to, the following:
 - (a) To demonstrate financial ability, each applicant shall provide a copy of its most recent stockholders annual report and its most recent SEC 10K, or, if the applicant is not publicly traded, its most recent financial statements. If the applicant does not have separate financial reports, it may submit applicable financial statements of an affiliate with explanation to demonstrate the financial ability of the applicant.
 - (b) To demonstrate managerial ability, each applicant shall attach a brief description of its history of providing telecommunications services and shall list the geographic areas in which it has been and is currently providing telecommunications services. Newly created applicants shall list the experience of each principal officer in order to show its ability to provide service.
 - (c) Technical ability shall be indicated by a description of the applicant's experience in providing telecommunications services, or in the case of newly created companies, the applicant may provide other documentation which supports its technical ability.
8. A description of the services proposed to be offered, the proposed exact geographic areas in which the services shall be offered and a map thereof.
9. Repair and maintenance information, including the name, address and telephone number of a Louisiana contact person responsible for and knowledgeable about the applicant's operations.
10. A list of other states where the applicant has applied to operate as a

telecommunications services provider and/or to offer telecommunications services, a list of other states where the applicant is authorized to operate, and a list of those states which have denied any requested authority.

11. Illustrative tariffs in compliance with the requirements set forth in Section 401 below.

12. Such other information as the Commission Staff may specifically request of any applicant.

F. SECURITY REQUIREMENTS

1. The Commission, through its Executive Secretary, shall require that all certificated carriers that resell prepaid basic local service to end users shall procure a performance bond, irrevocable letter of credit or other approved form of security sufficient to cover, among other things, any customer prepayments or deposits that may be collected from its end users.

This security requirement shall be a continuing one which automatically renews and is not subject to termination without at least 60 days written advance notice provided to the Commission from the surety and Certificated carrier reselling prepaid local service.

Upon receiving notification that the security will be canceled, the certificated carrier reselling prepaid local service shall have 30 days following the notice of the cancellation to send proof of a new bond, letter of credit or other acceptable security agreement to the Commission. Should the certificated carrier reselling prepaid local service fail to provide proof prior to the lapse of this 30-day period, the Commission may institute proceedings to revoke the carrier's certificate.

2. The performance bond, letter of credit or certificate of deposit shall be in the form approved by Commission Staff. The amount of security required shall be calculated on a sliding scale, determined quarterly by the carrier and automatically submitted to the LPSC staff, using the following formula:

$$(N^* \times \text{Deposit collected per customer}) + (N \times \text{Monthly prepaid fee}) + (N \times \$0.50^3) \\ = \text{Required amount of Security/Bond.}$$

* N shall be the total number of end users or access lines, whichever is greater.

\$50,000.00 shall be the base or minimum amount of security a carrier is required to post with the Commission.

3. All existing certificated carriers reselling prepaid local service shall also comply with these new security requirements within 30 days of the effective date of this order.

4. A certificated carrier reselling prepaid local service shall provide the Commission with quarterly reports detailing the number of customers, number of access lines and amount of deposit and prepaid monthly fee for basic local service charged per customer. Should the number of customers, lines, or charges increase, the certificated carrier reselling prepaid local service shall automatically adjust its security on file with the Commission at the expiration of the quarterly deadline. The reports shall be due as follows: April 30 for data existing on April 15; July 30 for data existing on July 15; October 30 for data existing on October 15; and January 30 for data existing on January 15.

³This figure is based upon the cost of producing and mailing notices to customers of a possible disconnection, in the event the reselling carrier fails to provide notification.

All carriers must provide supporting data as described above, calculate the security as provided under these regulations and post the appropriate bond within 30 days of the effective date of this order based on information from the most recent available figures. In any event, this information must not be more than 2 weeks old.

5. The penalty for failing to comply with any one of these requirements includes a fine of not greater than \$10,000.00 and /or revocation of the carrier's certificate by the Executive Secretary, following 10 days written notice of the proceeding for revocation. The Executive Secretary shall also have the authority to order the ILEC to place a freeze on the non-complying carrier's new orders until the appropriate quarterly security update is posted and requirements in this order have been met.

6. The Commission may require a bond or other security requirement at any time for those carriers excluded from these regulations, based upon the carrier's managerial, financial or technical ability.

G. A showing of public convenience and necessity shall not be required of an applicant hereunder. A showing that an ILEC's services or facilities are somehow inadequate in any local service area as a condition precedent for grant of authority to an applicant hereunder shall not be required nor considered by the Commission.

H. Applications determined by the Commission Staff to be in compliance with each of the above requirements may be approved by the Commission through its Secretary and a Certificate of Authority issued therewith, unless the Secretary elects to publish notice of any application in accordance with Rule 19 of the Commission's Rules of Practices and Procedures, in which case a Certificate of Authority may be issued pending the resolution of any protest filed pursuant to subsection I below. Notice of approved applications will be published in the Commission's Official Bulletin.

I. Any notice of protest timely filed in accordance with Rules 19 and 20 of the Commission's Rules of Practices and Procedures shall be docketed and administered pursuant to Rules 54 through 66 of the Commission's Rules. Any applicant issued a Certificate of Authority hereunder shall be allowed to provide telecommunications services pending final resolution of any notice of protest filed pursuant to Rule 20 of the Commission's Rules.

J. TSPs obtaining a Certificate of Authority under this Section shall obtain certification subject to the following conditions and obligations:

1. TSPs shall comply with all Commission rules, regulations, orders, tariff and other requirements relevant to the provision of telecommunications service.

2. TSPs are prohibited from engaging in unreasonable price discrimination, predatory pricing, price squeezing, or tying arrangements with respect to other TSPs and end users regardless of whether services are offered pursuant to tariff and/or contract.

3. TSPs are prohibited from providing preferences related to the provisioning of telecommunications services to affiliated entities.

4. TSPs shall file with the Secretary of the Commission all reports required pursuant to Section 302 below.

5. TSPs shall maintain on file with the Commission all current tariffs and service standards.

6. TSPs shall cooperate with Commission investigations of customer complaints.

7. As required by the Commission, TSPs shall participate in and contribute to a Universal Service Fund.

8. TSPs shall comply with the mandates of Commission Order No. U-17656-B, dated October 20, 1992 regarding the Americans with Disabilities Act.

9. Following certification, TSPs are required to file tariff amendments pursuant to Section 401 regarding new service offerings and changes to the geographic areas where services are to be offered prior to provisioning a new service or implementing a change in service area(s).

10. After notice and hearing, such other obligations the Commission may require.

Failure of a TSP to comply with any of the above conditions and obligations may, after notice and hearing, result in the rescission of its Certificate of Authority and/or the imposition of monetary fines not exceeding ten thousand dollars (\$10,000) per violation.

K. In addition to the conditions and obligations applicable to all TSPs set forth above in subsection J, TSPs designated by the Commission as CLECs shall be subject to the following additional conditions and obligations:

1. Upon request a CLEC shall provide to any customer in its certificated area basic local service, and shall render adequate service within its certificated area. This does not relieve an ILEC from its obligations to subscribers arising from its status as the Essential Telecommunications Carrier.

2. Within ninety (90) days of receipt of a bona fide request, a facilities-based CLEC shall provide interconnection as close as technically possible to the end user or at other locations more efficient, technically or economically feasible to the party requesting interconnection. A cable television system providing telecommunications services as a CLEC shall make interconnection available at its head end or at other locations more efficient, technically or economically feasible to the party requesting interconnection.

3. A facilities-based CLEC shall make all telecommunications service offerings on its facilities available for resale within the same class of service without unreasonable discrimination.

4. A CLEC shall charge non-discriminatory switched access rates which do not exceed the intrastate switched access rates of the competing ILEC in each of the CLEC's certificated areas.

5. All CLECs shall charge non-discriminatory interconnection rates.

6. All CLECs shall provide all customers equal access presubscription to their long distance carrier of choice as provided by Commission Orders.

7. Upon request a CLEC shall provide, either on its own facilities or through resale, service in accordance with its tariffs to all customers in the same service classification in its certificated areas.

Failure of a CLEC to comply with any of the above conditions and obligations may, after notice and hearing, result in the rescission of its Certificate of Authority and/or the imposition of monetary fines not exceeding ten thousand dollars (\$10,000) per violation.

L. After notice and hearing, the Commission may impose monetary fines not exceeding ten thousand dollars (\$10,000) per violation, or revoke a certificate previously issued to any applicant which:

1. Does not provide or fails to disclose information required by subsections E and F of this Section.
2. Submits false or materially misleading information in its application.

3. Is found not to possess adequate financial, managerial and/or technical abilities to provide services.
4. Fails to provide a performance bond, line of credit and/or certificate of deposit, or establish an escrow or trust account, if required as a precondition to certification or, after notice and hearing, subsequent to the granting of certification.
5. Is found to have failed to comply with any and all applicable Commission rules, regulations, orders, tariffs, and procedures, including these Regulations such as the conditions and obligations imposed in subsections J and K above.

SECTION 302. Reporting Requirements of Telecommunications Services Providers

A. All TSPs providing telecommunications services in Louisiana shall file with the Commission the following reports on a Louisiana-specific basis by April 1st of each year in accordance with Commission General Order dated August 31, 1992.⁴

1. All annual financial reports, including income statement and balance sheets.
2. Annual report on the availability of service capabilities and service offerings within Louisiana subdivided by facilities-based and non-facilities-based.
3. Annual report on the number of customers, access lines served, and revenues, subdivided by residential and business.

B. One year from the date of obtaining its Certificate of Authority, and semi-annually thereafter, all CLECs shall file with the Commission, service standard reports as follows:

1. Complaints - the number of complaints filed with the Commission and the CLEC.
2. The change in the total numbers of customers in each service category served in Louisiana.
3. % Appointments Offered in Five (5) Days - the percentage of appointed service initiation orders for basic local service implemented within five (5) days of such request.
4. Service Initiation Appointments Met - the percentage of appointed service initiation orders that are implemented by the appointment date set with the customer.
5. Customer Trouble Reports - the number of customer reported troubles.
6. Percentage Out-of-Service Troubles Cleared Within 24 Hours - the percentage of out-of-service customer trouble reports that are cleared within 24 hours of taking the initial trouble report.

C. The Commission may modify these reporting requirements as technology and customer needs change and as competition in the local market develops.

SECTION 401. Tariffs

A. All TSPs shall file tariffs with the Commission describing the services offered and the rates charged. All such tariff filings shall be in compliance with the rules set forth in Order No. U-20375, dated November 18, 1994 as contained in these Regulations. Upon request tariffs shall be filed on a computer disk in a format specified by the Commission Secretary.

⁴ Treatment of information designated as trade secret, proprietary or confidential.

B. Providers of CMRS and providers of PMRS shall file tariffs which identify and describe the rates, terms and conditions of services offered and provided in Louisiana. Such tariff filings shall be reviewed by the Commission consistent with the mandates of the Omnibus Budget Reconciliation Act of 1993 as codified at 47 U.S.C.A. §332, as amended.⁵ However, to ensure the universal availability of telecommunications services to Louisiana consumers at affordable rates, providers of CMRS or PMRS, where such services have become or are a substitute for land line telephone exchange service for a substantial portion of the communications within the State, shall be required to abide by and comply with these tariff filing requirements.

C. Except as modified in subsection 401.B, the Commission hereby incorporates and restates the technical tariff rules as adopted in Order No. U-20375 and as amended as shown herein.

1. General Requirements

- a. Each regulated telecommunications services provider shall maintain on file with the Commission tariffs which set forth all of the rates and charges for customer services, the different services available to subscribers, and the conditions and circumstances under which service will be furnished. When the Commission has authorized contract rates, the conditions under which such contracts may be offered shall be clearly stated in the provider's tariff but the contracts themselves need not be part of the tariff. Upon request by the Commission, the contracts are to be made available to the Commission for its review. The tariff shall not include charges for detariffed equipment and services.
- b. Each tariff shall be Louisiana-specific and all rates, charges, and service descriptions shall be for intrastate usage, unless interstate rates are necessary to compute the intrastate portion of a customer's monthly bill; then, the interstate rates, charges and service description shall also be quoted in the tariff or referenced and readily available to the extent necessary to compute the intrastate portion of a customer's bill.
- c. Each tariff must be clearly expressed in simple words, sentences and paragraphs. It must avoid unnecessarily long, complicated or obscure phrases or acronyms so that the customer will understand that for which he is contracting or obligated to pay.
- d. Each tariff shall be written in a manner such that service will be provided on a non-discriminatory basis. No public statement of service quality, rates, or service offerings or billings should be misleading or differ from those stated in the tariff.
- e. A printed notice shall be kept posted by each company in a public and conspicuous place in each office, if any, where application for service may be made stating that its tariff and standard contract and agreement forms, are on file at that office and are open to examination by any person. In the case of telecommunications providers without an office in Louisiana the notice and tariffs will be maintained at the office of local counsel or the agent for service of process. The holder of this information shall be disclosed to the Commission.
- f. All proposed changes to an existing, filed tariff shall be directed to the Secretary of

⁵ See also, *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd. 1411 (1994); and *In the Matter of Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana*, Report and Order, PR Docket No. 94-107 (1995).

the Louisiana Public Service Commission, Post Office Box 91154, Baton Rouge, Louisiana 70821-9154. A filing must be received by the Commission before 4:30 P.M. of a normal Commission workday in order for it to be "filed" on that day.

- g. All tariff changes shall be submitted to the Commission in quadruplicate in substantially the same form described herein. The letter of transmittal shall be sent in duplicate with the request that the duplicate be returned. If requested, the duplicate copy stamped "Received" will be returned to the company, which shall be the notice to the company that the proposed tariff has been received. Once the tariff has been accepted by the Commission, the telecommunications services provider will be notified either by notation on the tariff transmittal letter submitted by the provider, or by separate letter from the Commission.
- h. Telecommunications services providers shall charge only the rates contained or allowed in their tariffs. Telecommunications services providers electing to enter special marketing promotions where they desire to temporarily lower rates or suspend specific charges and later return to existing tariff rates, may notify the Commission by letter stating the specific tariff charges, a description of the customers who would be eligible for the decrease, the conditions under which customers would be eligible for the decrease, the conditions under which customers would receive a decrease, and the beginning and ending dates of the reduction.

2. Format

- a. All tariffs filed shall be submitted in loose leaf form on 8-1/2" x 11" sheets, typewritten on a good grade of white three hole paper of durable quality, using one side of the paper only. All copies must be clear and legible. Sufficient margin shall be allowed on each sheet for a left-hand binding edge so that when the tariff book is open all printed matter will be in view.
- b. Every page in the tariff shall be numbered in the upper right hand corner of the page.
- c. Each page shall bear the name of the filing company in the upper left-hand corner of the page.
- d. Each initially approved page in the tariff shall be marked "Original Page" in the upper right-hand corner of the page. As an example: Original Page No. 1, or Original Page No. 5.2.
- e. Revised pages in the tariff shall be marked with the number of the revision in the upper right-hand corner and the number of the page(s) it replaces. As an example:
First Revised Page No. 1
Cancels Original Page No. 1
or
Fourth Revised Page No. 5.2
Cancels Third Revised Page Nos. 5.2, 5.3
and Second Revised Page 5.4
- f. On each page shall appear the Issued Date in the upper left-hand corner of the page. The Issued Date will be the date shown on the provider's transmittal letter to the Commission referencing the tariff filing.
- g. On each page shall appear the Effective Date in the upper right-hand corner of the page. The Effective Date will be the date indicated on the provider's transmittal letter to the Commission for the tariff to go into effect.
- h. On each page shall appear the name and/or title of the issuing officer of the filing company in the upper left hand corner of the page under the Issued Date.
- i. The filed tariffs shall contain the following in the order listed:

- (1) Title Page. The title page shall adequately identify the tariff, filed by the particular company with the Commission and will include the name, address and telephone number of the company representative responsible for providing information with respect to the company's tariff filings.
- (2) Table of Contents. All tariffs shall have a Table of Contents identifying the page location of each section in the tariff. In tariffs of less than 30 sheets, the table of contents may serve as subject index for the entire volume.
- (3) Symbols Used in Tariff Filings. The following symbols will be used in any proposed change to the existing tariff in the manner described herein. The symbols will appear in the right margin of each sheet to denote the line(s) to which any change has been made. In the event more than one type of change occurs on the same line, two or more types of symbols denoting the changes shall be placed next to each other on the affected line. The following are the only letters allowed to denote the following types of change:
 - C - To signify Changed Regulation
 - D - Delete or Discontinue
 - I - Change Resulting in an Increase to a rate
 - M - Moved from Another Tariff Location
 - N - New
 - R - Change Resulting in a Reduction to a rate
 - S - Matter Appearing Elsewhere or Repeated for Clarification
 - T - Change in Text But No Change to Rate or Charge
 - V - Signifies Vintage Tariff
 - Z - Correction
- (4) Technical Terms and Abbreviation. This section shall contain full and concise information as to the meaning of all technical and special terms and abbreviations used in the tariff.
- (5) Rules and Regulations. This section shall include all rules, regulations, practices, exceptions and conditions made or observed relative to the services provided by the company which are general and apply to allow many of the services offered. It shall contain the telecommunications provider's deposit requirements. If a general regulation does not apply to particular service, that fact should be clearly stated within the regulation or as part of the specific regulations of a particular service.
- (6) Description of Service Offered.
 - (a) This section shall contain a description of how a billable call is timed, when timing begins and ends, and the method used to make this determination.
 - (b) This section shall also contain a description of how distance is measured for toll rating purposes and the formula used to compute it, as well as what points are used for origination and termination with respect to calculation of the distance between them.
 - (c) This section shall detail all relevant information which pertains to a particular type of service, and will be subdivided into subsections for each type of service offered.
- (7) Rates. All standard rate schedules, rates and charges for all services, and other

data necessary to compute a customer's monthly bills for intrastate service shall be placed in this section. If more than one type of service is offered, all information pertaining to an individual service shall be grouped together or clearly cross-referenced.

- (8) Index. To facilitate reference by subject matter, tariffs of 30 sheets or more are to include an alphabetical listing of services and the page number on which they may be found.

3. Information to Accompany All Tariff Filings

- a. The original and one copy of a letter of transmittal to the Commission shall accompany each tariff filing, which lists the sheets (by section, page number, and revision level) being transmitted and gives a brief description of all changes included therein and the reasons for the change(s). The letter must also include a paragraph stating I) the service or product affected, (ii) the type of customer affected, (iii) the impact on the customer of the proposed change, and (iv) whether the affected service or product is competitive or non-competitive. In addition, if the tariff filing affects an optional service the letter must specify the existing price or rate for the service and any proposed change to the price or rate. The Commission reserves the right to request additional data, including cost of service data.
- b. With each tariff filing the provider shall include four (4) copies of the tariff pages which contain proposed changes as they appear in the filed tariff.
- c. If applicable, imputation compliance and testing data shall accompany the tariff filing.

4. Log-In Book and Bin

- a. The Commission's Staff shall maintain a log-in book for each tariff filing. The notation for each tariff shall consist of (i) the name of the entity filing the tariff, (ii) date filed, and (iii) a general, brief description of the filing. The log-in book shall be available to the public for inspection.
- b. The Commission's Staff also shall maintain a tariff bin for copies of all filed tariffs. Copies of filed tariffs shall remain in the tariff bin until the tariff is accepted, rejected, or published, whichever occurs first. The tariff bin shall be available to the public for inspection.

D. The Commission hereby establishes the following substantive tariff rules to be incorporated as rules "5", "6" and "6.A" of the tariff rules and procedures adopted by the Commission in Order No. U-20375:

5. General Tariff Provisions.

- a. All tariffs (including revised tariffs) filed with the Commission must be accepted by the Commission through its Secretary prior to implementation. Except as provided in 5(b)(4) below, a tariff is accepted once signed by the Secretary.
- b. Accepted tariffs will become effective as follows:
 - 1. All tariffs are effective upon acceptance or later if a later date is specified in the tariff.
 - 2. A TSP may request expedited acceptance. However, the disposition of such request shall be subject to the ability of the Commission and its Staff to accommodate such request.
 - 3. The Commission through its Secretary must accept, reject, or elect to follow the procedure set forth in 5(c) below within ten (10) working days after the filing of a tariff. If no action is taken within the ten (10) day period the tariff is deemed

accepted.

4. Tariff filings made pursuant to an order of the Commission shall be effective on the date specified by the Commission.

c. The Commission through its Secretary shall have the right to publish notice of a filed tariff in the Commission's Official Bulletin and either delay acceptance of any particular tariff filing or accept the tariff filing and publish notice of the accepted tariff.

d. Inherent within the Commission's plenary power is the Commission's authority to delay the acceptance of a tariff and consider the tariff at the Commission's Business and Executive Session. Additionally, the Commission may suspend for reasonable cause after notice and hearing any tariff previously accepted.

6. Rate Decreases and Introduction of New Services.

a. All Tariffs filed for the purpose of:

(1) lowering the rate of any service offered by a TSP, or

(2) introducing a new Basic, Non-Basic or Interconnection Service, program or promotion offered by an ILEC regulated pursuant to the Consumer Price Protection Plan, shall be subject to review by the Commission Staff. If no action is taken within the ten day period mentioned in 5(b)(3) above, then any such tariff shall be deemed to be accepted by the Commission.

b. The Commission through its Staff shall determine which new, or reclassified telecommunications services are Basic, Non-Basic and Interconnection.

c. Upon acceptance of a tariff as provided 6(a) above, the tariff filing shall not be subject to suspension pending the outcome of any challenge to the filing or acceptance. The burden of proof in such a challenge shall be on the intervenor or complainant; provided, however, that if applicable and subject to the execution of a confidentiality agreement, the TSP that filed the tariff submits cost of service data as stated in Commission Order No. U-20375.

d. Tariffs filed by an ILEC that affect its toll products shall be subject to the imputation/pricing standard set forth in Order No. U-20710. ILEC tariffs which include monopoly features and/or functions provided to other TSPs, except Local Optional Service (LOS), must impute the cost of all such monopoly features and/or functions when provisioning such services to itself. In addition, the Commission reserves the right to develop imputation rules applicable to other ILEC services as deemed necessary in the future.

6.A. Technical and Market Trials of Non-Basic Services.

a. Non-basic local services may be offered to customers by any TSP as a technical trial or market trial for the purpose of evaluating, in an operating environment, the performance and/or pricing of specific services.

b. A technical or market trial shall not require a tariff filing to initiate the trial. A transmittal letter shall be provided to the Commission, through its Secretary, no later than thirty (30) days prior to the proposed start of the trial. The transmittal letter shall be filed in accordance with Commission General Order dated August 31, 1992 and shall include the following information:

1. The proposed start date of the trial.
2. A description of the new service to be offered.
3. All rules and regulations governing the offering of the trial and the terms and conditions applicable to the services.
4. The specific geographic area(s) in which the trial is to be offered.

5. A description of the customers that are eligible to participate in the trial.
 6. The rates and charges for services offered pursuant to the trial, including any range of rates within which the rates may be increased or decreased.
 7. The purpose of any technical or market trial must be specifically and clearly stated in the transmittal letter.
- c. A proposed technical or market trial shall commence on its proposed start date unless the Commission, through its Secretary, requests additional information, including the data specified in subsection f below, or determines that the provisioning of the trial services is not in the public interest, in which cases the Secretary shall specify the start date, or prohibit the trial.
 - d. Technical and market trial service offerings shall be limited to new non-basic (local) services or enhancements of existing non-basic service. Restructuring the pricing of existing services shall not be considered a new non-basic (local) service or an enhancement of an existing non-basic (local) service which can be offered as a trial service. Market or technical trials shall not be an avenue for the ILEC to bundle basic or interconnection services with non-basic (local) services.
 - e. The customers to whom the trial services are to be offered shall be notified in writing, prior to offering and/or provisioning service, of the trial and of the terms and conditions of the trial.
 - f. Any service offered to customers by an ILEC as a technical or market trial shall cover the total service long run incremental costs of providing such services and satisfy the imputation/pricing standard applicable to LEC toll offerings as set forth in Commission Order No. U-20710, in addition to any other applicable imputation standard. Upon request by the Commission Staff, cost data evidencing that the pricing of market trial services is in compliance with this subsection shall be submitted to the Commission Staff prior to implementation of any trial service. Trial services offered by an ILEC shall reflect the tariffed rates of underlying essential services.
 - g. The length of any technical or market trial of a service shall be of limited duration not to exceed six (6) months.
 - h. Trial services shall not be offered on a state-wide or LATA-wide basis for trial purposes.
 - i. Any services offered pursuant to a technical or market trial shall comply with applicable pricing and price floor rules set forth in subsections 701(G) and 701(H) of the Price Plan for ILECs regulated thereunder.
 - j. If a trial service is not implemented subsequent to trial, the cost of such trials should be allocated to shareholders and shall not be recovered through regulated services of an ILEC.
 - k. If a trial service is ultimately offered to the public pursuant to a general tariff, the costs of the technical and market trials shall be a component of the rate at which the service is offered and shall be subject to the pricing rules of the Price Plan of an ILEC regulated thereunder.
 - l. No later than thirty (30) days after the conclusion of a technical trial or market trial, a TSP shall file a report with the Commission, through its Secretary, pursuant to Commission General Order dated August 31, 1992, summarizing the results of the trial and the TSP's future plans for the new services.

7. Prohibited Tariff Filings

A tariff filing that is designed to alter or modify any Commission order, rule, regulation, policy or procedure in any way is prohibited.

E. ILECs with more than 100,000 access lines statewide shall file LRIC and TSLRIC cost

studies with all tariff filings for new Basic Local Services or decreases in rates of Basic Local Services. A Small ILEC, when making such tariff filings, shall either adopt as proxy the cost studies filed by the large ILEC, or file its own such studies.

F. Additional Technical Tariff Rules for the termination of a delinquent telecommunications reseller

1. Purpose. The Louisiana Public Service Commission hereby promulgates the following regulations to establish a procedure whereby an incumbent local exchange carrier may terminate a delinquent Reseller as defined by the two carriers' interconnection agreement while at the same time ensuring the protection of the innocent end-user consumer from improper disconnection, slamming and other abuses.
2. All ILECs must:
 - a. make a good faith effort to work with a Reseller in determining what portion of the debt owed is disputed and which portion in undisputed pursuant to the parties' interconnection agreement, and shall work with the carrier to resolve the problem and arrange for payment, if possible, pursuant to the interconnection agreement entered into between the ILEC and the Reseller.
 - b. Send notice of intent to terminate by certified mail to the Reseller at its last known address, to the Commission Office located in the same district as the utility whose service is to be terminated, and to the LPSC Utilities Staff in the Main office. The failure of the District office or the LPSC Utilities Office to receive timely notice shall constitute prima facie evidence of unlawful termination.
 - c. Verify with the LPSC Utilities Staff in the Main office the correct address of the utility to be terminated (for Notice purposes.)
 - d. State the following in the content of the notice:
 1. the name, address and account number of the consuming utility;
 2. a plain statement of the grounds upon which the right to terminate is founded, including the amount owed, and;
 3. the exact date and time or range of dates and times service will be discontinued.
 - e. Not discontinue service to the customers of a reseller prior to the date and time (or range of dates and times) given on the notice of intent to terminate. In no case shall disconnection be effected less than twenty (20) days from date of mailing of the notice of intent. In the event service is not terminated on the date and time or range of dates and times given in the initial notice, service may not be disconnected without providing an additional notice of intent to disconnect pursuant to these regulations. If the last day of the twenty (20) day period falls on a Saturday, Sunday or legal holiday, the notice period will expire at the close of the terminating utility's next business day.
 - f. In addition to any other remedy available at civil law, be liable for all damages to ratepayers of the reseller resulting from an unlawful termination.
3. All resellers shall:
 - a. make a good faith effort to work with the ILEC in determining what portion of the debt owed is disputed and which portion in undisputed pursuant to the parties' interconnection agreement, and shall work

with the carrier to resolve the problem and arrange for payment, pursuant to the interconnection agreement entered into between the ILEC and the Reseller. Written documentation of reasons and support for a disputed debt must be forwarded to the ILEC with copies to the LPSC District Office and LPSC Utilities Division within five (5) days of the ILEC notice.

- b. File, by certified mail, with the Commission District Office and LPSC Utilities Division a notarized affidavit (Attachment A) verifying that you will either pay the undisputed amount owed to the underlying carrier or that you will mail or send telephonic notice to your customers at least ten (10) days prior to the disconnection date listed on the notice, and that if that action is not completed in a timely manner then the bond will be forfeited. (Attachment A.) The Reseller shall also file a list of customer names and addresses under seal which shall be used by the Commission if the Reseller fails to provide notice to consumers as provided by these regulations.
- c. Send a notice to end user customers which shall read in legible easy to read bold type as follows: *****NOTICE***** Your telephone service may be subject to disconnect on (insert date or range of dates of disconnect) due to billing issues arising between (state reseller company name) and (state ILEC name) which are unrelated to your payment status. Because your service may be disconnected, you may need to prepare other arrangements on or before the disconnect date to avoid loss of service. Any payments made for service not received should be directed to (state Reseller name) at (insert Reseller phone number which WILL be available before and after disconnect.)
- d. Immediately take those steps necessary to identify any customers who are also public utilities. A list of those customers and their account numbers and addresses shall be provided to the respective District Offices and the LPSC Utilities office under seal.

Attachment A
AFFIDAVIT

STATE OF _____
PARISH OF _____

BEFORE ME, _____ (NOTARY), a Notary in and for the said State and Parish, this day personally appeared _____ (Appearer), appearing herein in his capacity as _____ (Title) of _____ (Company), (the "Company") duly authorized to act on behalf of said Company, who being by me first duly sworn deposed and said that:

the foregoing instrument/ Notice of Disconnect was received by said Company with an undisputed amount listed as _____ (Dollar amount) due to the underlying carrier and a date of disconnect listed as _____ (Date or dates specified).

He/She is appearing to swear or affirm that he/she will ensure, on behalf of said Company, that:

_____ The Company can and will pay the undisputed amount owed to the underlying carrier before the disconnect date;

OR

_____ The Company will mail or send telephonic notice, pursuant to LPSC Rules and Regulations, to your customers at least five (5) days prior to the disconnection date as listed in the attached Notice from the underlying carrier (ATTACHMENT OF NOTICE REQUIRED.)

AND if I fail to do what I say that I will do (send notice or pay) then I forfeit the bond for failing to do as I have sworn I would do. (See attached affidavit)

AND if present before the Commission and duly sworn, his testimony would be the same.

Person duly authorized to Act for
Company
SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____, 2000.

NOTARY PUBLIC
My Commission expires _____.

SECTION 501. Universal Service

A. The Commission incorporates and restates herein the definition of Universal Service as adopted by the Commission in General Order dated May 22, 1995 and as amended herein:

"A. The Commission hereby defines universal service to consist of the following:

1. Residential and single-line business access to the local exchange network, including usage and measured usage within the local service area.
2. Touchtone capability.
3. White page directory listing (residential and business).
4. Access to directory assistance (local).
5. Directory distribution (publication and distribution of at least one annual local directory).
6. Access to 911 service (where established by La. R.S. 45:791 et seq.).
7. Affordable line connection (for service initiation).
8. Access to long distance carriers and operator services.
9. Access to the telephone relay system.
10. Access to customer support services, including billing.
11. Access to a calling plan for a local service area sufficiently large to encompass a user's community of interest (but no greater than 40 miles).

B. The Commission hereby declares that the definition of universal service shall be subject to modification by the Commission as technology and customer needs change. Also, the Commission reserves the right to modify the definition of universal service as a result of any FCC and/or federal decrees, orders, or legislation.

C. The Commission also declares that nothing contained in this Policy Statement and Definition of Universal Service is intended to undermine or impair the Commission regulatory authority."

B. The Commission hereby finds that it is in the public interest to make available universal service to all end users at affordable rates.

C. All services and functions listed as part of the universal service definition shall be required of a CLEC.

D. Depending on the results of cost studies ordered pursuant to Commission General Order dated May 22, 1995 and Subdocket A of Docket U-20883, a Universal Service Fund may be established to collect and disburse monies to insure the availability of Universal Service to all consumers in Louisiana at affordable rates. If the Commission determines that such a fund is necessary, all TSPs providing service in Louisiana shall contribute to the fund. The basis from which contributions to the fund will be determined, and the method of disbursement there from shall be established in Subdocket A of Docket U-20883.

E. The Universal Service Fund shall be a method of achieving a public policy goal. Thus, disbursements from the fund shall not be limited to economically disadvantaged individuals.

SECTION 601. Essential Telecommunications Carrier

A. ILECs are hereby designated as the Essential Telecommunications Carriers (ETC). ETC's are obligated to provide basic local service to all customers upon request for such service within the ILECs' historically designated service areas until relieved of this obligation by the Commission. A CLEC providing basic local services in an ILEC's service area does not relieve the ILEC of its ETC obligations except as provided below.

B. An ILEC may petition the Commission to abandon its obligations as the ETC for a particular service area or areas if a CLEC is available to provide basic local service in such service area or areas. After a hearing, the Commission may approve the ILEC's request only if the CLEC is approved to assume all of the existing service obligations as ETC for the ILEC's service area or areas. In areas with only one ILEC, the ILEC is prohibited from ceasing to provide basic local service.

C. A CLEC may petition the Commission to be the ETC for a particular service area. The CLEC must be willing to fulfill all existing ETC service obligations and serve all customers requesting basic local service within the particular service area. After a hearing, the Commission shall determine whether the CLEC qualifies to serve as the ETC for the particular service area, whether the ILEC serving that same area desires to abandon its obligations as ETC and whether it will be in the public interest to switch the ETC for that particular service area.

D. Once a CLEC is designated as the ETC for a particular service area, it is prohibited from ceasing to provide basic local service unless otherwise relieved of that obligation by the Commission. Additionally, once the Commission determines that a CLEC should become the ETC, the Commission shall release the ILEC from its obligations as ETC for that service area.

SECTION 701. Consumer Price Protection Plan

A. Scope and Conditions:

1. Effective April 1, 1996, an ILEC with more than 100,000 access lines statewide shall be regulated pursuant to the terms and conditions of this Consumer Price Protection Plan (the "Price Plan" or "Plan"). The Price Plan is based on the ILEC's rates for service rather than its rate of return. Monitoring, reporting and tracking under the Price Plan shall be directed toward the ILEC's rates for services, revenues, expenses, costs and service quality. An ILEC shall be regulated under the Plan for a period of six (6) years unless earlier terminated by the Commission.

2. A "Small ILEC" as defined in Section 101 (37) may petition the Commission to be regulated under the terms and conditions of a price cap plan in lieu of continuing to be regulated pursuant to Order No. U-21181, dated June 30, 1995. If a Small ILEC fails to petition the Commission before April 1, 1996, then the ILEC has the opportunity to elect into a price cap plan by December 1, 1996 for the year 1997 and thereafter, or on the same date in each subsequent year. Once a Small ILEC elects into a price cap plan, it will remain in the plan for a period of five years unless earlier terminated by the Commission. No Small ILEC opting into a price cap plan may receive compensation from the Louisiana Exchange Carrier Association Fund ("LECAF").

3. Under the Price Plan, the LPSC shall continue to regulate the rates, terms and conditions of all telecommunications services provisioned in the State by an ILEC regulated hereunder. In no event will the Price Plan become effective prior to the effective date of these Regulations.

4. CLECs shall not be subject to the terms and conditions of the Price Plan at this time. However, the Commission specifically reserves the right to apply the Price Plan, or any modifications thereof, to the CLECs in the future if deemed in the public interest by the Commission following notice and hearing.

5. While operating under the Price Plan, an ILEC shall be responsible for its depreciation rates and schedules, and shall submit its Louisiana specific depreciation expenses to the Commission as part of its semi-annual reporting called for in subsection J below. All ILECs regulated under the Price Plan are prohibited from seeking any type of rate increase based on recovering any depreciation expenses or reserves. Should the Commission elect to return to traditional rate-base rate of return

regulation or rate-base rate of return incentive regulation pursuant to subsection B below, the incremental effect of an ILEC's depreciation expense (i.e., assuming responsibility without customer rates) shall not be recognized in the rate base.

6. The Price Plan shall apply to all regulated services offered by the ILEC prior to the adoption of the Price Plan and to all Basic Services, Interconnection Services and Non-Basic Services introduced by the ILEC after adoption of the Price Plan.

B. Term of Price Plan

1. There shall be no specific term for the Price Plan. It is intended that the elements of the Plan remain in effect through the initial six (6) years of the Plan unless the Commission finds it in the public interest, after notice and hearing, to modify or eliminate the Price Plan and substitute in its place traditional rate-base rate of return regulation or rate-base rate of return incentive regulation, or any form of regulation deemed appropriate and in the public interest by the Commission.

2. The Price Plan shall be subject to complete review after three years from its effective date as to each ILEC regulated thereunder, and again during the sixth (6th) year of the Plan. As a result of its monitoring efforts and periodic Price Plan reviews, the Commission may, if deemed in the public interest after notice and hearing, modify any aspect of the Price Plan, including ordering its termination and substitution.

C. Classification of Services under Price Plan

1. Each telecommunications service offered by an ILEC shall be classified into one of the following three categories: a) Basic Services, b) Interconnection Services, and c) Non-Basic Services.

2. The service categories are defined as follows:

a. Basic Services - are those services required to provide basic local service to residential and single line business customers, which include, among others, each of the items comprising the definition of Universal Service as specified in Commission General Order, dated May 22, 1995. Initially, Basic Services shall include the services itemized on Appendix "A" attached hereto and made part hereof.

b. Interconnection Services - are those services that allow other telecommunications services providers to interconnect to an ILEC's network to originate or terminate telecommunications services. Initially, Interconnection Services shall include the services itemized on Appendix "B" attached hereto and made part hereof.

c. Non-Basic Services - are all other services which are not classified as either Basic or Interconnection Services. Initially, Non-Basic Services shall include the services not itemized on either Appendix "A" or "B" attached hereto.

D. Initial Rates under Price Plan

1. An ILEC's initial rates under the Price Plan shall be the rates in effect immediately prior to implementing the Plan, as recalibrated to reflect the rate reductions implemented pursuant to the stipulated settlement referenced in subsection K below, for each individual Basic Service, each individual Interconnection Service, except cellular interconnection services subject to contractual arrangements, and each individual Non-Basic Service. The rate for each individual Basic Service may be reduced from these initial rates, subject to the price floors contained in subsection H below, but cannot exceed the initial rates under any circumstance for a period of five (5) years from the date the Plan becomes effective as to the ILEC. The rate for each individual Interconnection Service shall be similarly restricted for a period of three (3) years from the effective date of the Price Plan as to the ILEC.

E. Tariffs

1. An ILEC electing to be regulated pursuant to the Price Plan shall continue to be required to file tariffs with the Commission for all services in compliance with the terms and conditions of Section 401 of these Regulations, unless tariff requirements are exempted by the Commission by past or future rule or order.

F. New Services and Reclassification of Services under Price Plan

1. A new service is defined as a service, function, feature, capability or any combination of these which is not offered by the ILEC on the date the ILEC commences to be regulated pursuant to the Price Plan.

2. At least ten (10) working days prior to offering a new service, an ILEC shall file notice and a tariff with the Commission in accordance with Section 401 of these Regulations, which sets forth the rate, terms, conditions and proposed service category of the new service. Appropriate documentation and support related to the service classification and the proposed rate shall be provided.

3. Each July 1, the ILEC shall file a "Service Category Classification Report" with the Commission, which shall address the classification of new services and the reclassification of existing services. The Report shall identify all new services introduced during the 12-month period through May 31 of that year and provide the basis for the proposed market classification. The Report shall include any proposals for reclassifying any services, demonstrate the basis for the proposal and meet the requirements for reclassification as specified in the Plan.

4. The ILEC retains the burden of proof for all classifications and reclassifications of telecommunications services it proposes.

5. The Commission retains the right to approve, suspend or reject any proposal to introduce a new service, classify a new service or reclassify an existing service.

G. Pricing Rules under Price Plan

1. The initial rate of each individual service included in the Basic Services category as determined in subsection D above shall be capped for a period of five (5) years from the date the Price Plan becomes effective as to an ILEC. This means that the rate for any individual Basic Service may be reduced from its initial rate in accordance with the price floors but cannot exceed its initial rate under any circumstance for a period of five (5) years from the effective date of the Price Plan.

2. The initial rate for each individual service included in the Interconnection Services category as determined in subsection D above, with the exception of cellular interconnection services subject to contractual arrangements, shall be capped for a period of three (3) years from the date the Price Plan becomes effective as to an ILEC. This means that the rate for any individual Interconnection Service may be reduced from its initial rate in accordance with the price floors but cannot exceed its initial rate under any circumstance for a period of three (3) years from the effective date of the Price Plan.

3. After the first five (5) years that the Price Plan is in effect as to an ILEC, and during the sixth (6th) year only, an adjustment shall be made to the Basic Service category in the aggregate based on the Gross Domestic Product - Price Index (GDP-PI) minus a productivity offset of two and one-half percent (2.5%). For purposes of the pricing formula computation, if the GDP-PI is greater than five percent (5%), GDP-PI shall be assumed to be equal to five percent (5%). After the sixth (6th) year, the productivity offset shall be reevaluated by the Commission for application in the seventh and subsequent years.

4. The sixth (6th) and subsequent year price cap adjustments shall be effective April 1 of said years, and will be calculated using data for the "Test Year." The "Test Year" shall consist of data from the four most recent consecutive quarters available.

5. During the initial five (5) years of the Price Plan, no rate of an individual service included

within the Basic Services category shall be increased above its cap established in subsection D above. During the sixth (6th) and subsequent years, no rate of any individual Basic Service shall be increased by more than ten percent (10%) in any twelve month period.

6. During the initial three (3) years of the Price Plan, no rate of an individual service included within the Interconnection Services category shall be increased above its cap established in subsection D above. During the fourth (4th) and subsequent years, no rate of any individual Interconnection Service shall be increased by more than ten percent (10%) in any twelve month period.

7. Cellular interconnection is currently subject to contractual pricing arrangements between the ILECs and the cellular carriers. These contractual arrangements will remain in effect until their expiration. After expiration, cellular interconnection shall become part of the Interconnection Services category and the terms, conditions and rates shall comply with the provisions of the Price Plan.

8. The rates for the Basic and Interconnection Service categories may be reduced below their initial price caps as the ILEC deems appropriate subject to the restrictions of subsection H below.

9. The above price controls and price caps do not apply to rates and charges for services included in the Non-Basic Services category. Services so classified shall be rate deregulated, subject only to the price floor restrictions set forth in subsection H below, and the restriction that the rate for an individual service classified as Non-Basic shall not increase by more than twenty percent (20%) in any twelve-month period. Non-Basic Services shall not benefit from cross subsidy or revenue support from Basic Services.

10. Tying arrangements are prohibited.

H. Price Floors under Price Plan

1. The rate for each service shall equal or exceed the ILEC's total service long run incremental cost (TSLRIC) of providing the service unless specifically exempted by the Commission based on public interest concerns (e.g., provision of universal service); or, unless the ILEC, in good faith, prices a service below its TSLRIC to meet the equally low price of a competitor, and subject to applicable imputation standards adopted by the Commission in Docket No. U-20710 and in these Regulations.

2. The price floors as specified above shall remain in place for the duration of the Price Plan.

3. The methodologies regarding the development and application of the TSLRIC studies will be considered as part of the monitoring process set forth in subsection J below.

I. Contract Service Arrangements

1. The tariffs currently in effect for Contract Service Arrangements will remain unchanged under the Price Plan; provided, however, an ILEC's contract service arrangements are subject to any applicable rules and procedures implemented in other sections of the Regulations, and all Contract Service Arrangements must specifically comply with the pricing rules and floors set forth in subsections G and H above.

J. Monitoring and Reporting Requirements under Price Plan

1. Marketplace Data Submissions and Related Monitoring

The Commission and its Staff shall monitor the development of competition in the telecommunications markets in Louisiana subsequent to the effective date of the Price Plan as to any ILEC. Upon request, an ILEC regulated under the Price Plan shall furnish the Commission, data related to the following:

- a. Changes in the marketplace.

- b. The impact of competition on the ILEC.
- c. The competitive status of services to determine the degree of competition in their provisioning.
- d. The impact of federal initiatives.
- e. The technical compatibility between carriers.
- f. Service performance of new market entrants.

The information will be used by the Commission to assess the impact of marketplace changes, the continued viability of the Price Plan, market impact of competition on ILECs, market impact of federal initiatives, appropriateness of service categories, technical compatibility between telecommunications services providers, service quality performance of all telecommunications services providers, and other issues arising from the entry of new providers of telecommunications services in the local market. The Commission reserves the right to establish new areas of inquiry and investigation.

2. Financial Reporting

An ILEC regulated pursuant to the Price Plan shall file semi-annually, Louisiana specific company basis reports excluding Commission adjustments and returns as specified in Appendix "C" hereto. An ILEC regulated under the Price Plan shall continue to report to the Commission on an interstate, intrastate, and non-regulated basis. A Small ILEC regulated under a price plan shall continue to file all reports and data required to be filed with the Commission pursuant to Order No. U-21181, dated June 30, 1995. In addition, an ILEC regulated under the Price Plan shall furnish the Commission the following data within thirty days of issuance:

- a. Annual Reports of the ILEC and parent corporation.
- b. Forms 10Q and 10K of the ILEC and parent corporation.
- c. Proxy statements containing financial data not in annual reports.
- d. Shareholder Newsletters.
- e. ARMIS Reports.

3. Service Quality

ILECs regulated pursuant to the Price Plan shall furnish the Commission the following service quality data on a semi-annual basis for monitoring by the Commission and its Staff:

- a. Commission Complaints per 10,000 access lines for ILECs with more than 100,000 access lines; or Commission Complaints per 100 access lines for ILECs with less than 100,000 access lines.
- b. Percentage Installation Appointments Offered within Five (5) Days of Service Contact.
- c. Percentage Installation Appointments Met.
- d. Total Network Repair Reports per 100 Access Lines.
- e. Average Duration (Hours) Special Services - Complex.
- f. Percentage Out of Service Troubles Cleared within 24 Hours.
- g. Overall Residence Satisfaction.

The data described above shall be segregated by the ILEC so that the Commission can monitor and evaluate separately the ILEC's service quality performance for Basic Services. If the Commission finds as a result of monitoring that the ILEC's service quality is substandard in any one of the above listed categories, the Commission may, after notice and hearing, take action as it deems necessary and proper to assure a desirable level of service quality, including imposing a monetary penalty not exceeding ten thousand dollars (\$10,000) per violation.

4. Periodic Reviews of the Price Plan

The Commission shall review the Price Plan at the end of the third (3rd) year of the Plan with particular attention to the following issues:

- a. The status of universal service.
- b. The ILEC's compliance with Plan rules and reporting requirements.
- c. Just and reasonable rates (as determined without reference to a rate of return or other rate base proceeding).
- d. Modification to Plan parameters.
- e. Service quality.
- f. The consumer and marketplace impacts of price regulation.
- g. The status of competition in all markets and its impact on consumers and on the ILECs.
- h. The continuation of price caps on the Interconnection Services category subsequent to the third year of the Price Plan.

The Commission shall conduct a review of the following during the sixth year of the Price Plan:

- a. The status of universal service.
- b. Service quality performance.
- c. The consumer and marketplace impacts of price regulation.
- d. The degree of technological change in the marketplace.
- e. The impact of federal initiatives on Louisiana telecommunications markets.
- f. The status of competition in all markets and its impact on consumers and on the ILECs.
- g. The ILEC's compliance with Plan pricing rules and reporting requirements.
- h. Just and reasonable rates (as determined without reference to a rate of return or other rate-based proceeding).
- i. Modifications to, or termination of the Plan.
- j. The continued viability of the Price Plan.

Adjustments or modifications based on the findings resulting from the Periodic Reviews will be implemented on a prospective basis. Any further reviews of the Plan, including periodic update of Plan parameters, will be considered.

K. BellSouth Annual Rate Reductions

1. Pursuant to the terms and conditions of the stipulation entered in Subdocket E of Docket No. U-17949 (the "Stipulation"), BellSouth shall provide to its ratepayers seventy million dollars (\$70,000,000) in rate reductions over the initial three (3) years that BellSouth is regulated under the Price Plan, and shall additionally provide a one time nine million dollar (\$9,000,000) credit to its ratepayers during the first year BellSouth is regulated under the Price Plan. These reductions shall be made according to the Stipulation and applied as determined by the Commission.

L. Miscellaneous Provisions

1. During the Price Plan, an ILEC regulated thereunder shall notify its customers of any change in the rate for services offered using the same procedures in effect at the implementation of the Price Plan.

2. Rather than limit or restrict an ILEC's commitment to universal service and to the ILEC's fulfillment of Essential Telecommunications Carrier obligations, the Price Plan is intended to strengthen and reaffirm such commitments.

SECTION 801. Number Portability

A. TSPs providing local telecommunications services shall provide number portability, upon receipt of a valid request, that ensures that an end-user customer of local telecommunications services, while at the same location, shall be able to retain an existing telephone number without impairing the quality, reliability, or convenience of service when changing from one provider of local telecommunications services to another. There are no exceptions to this requirement. In particular, no TSP shall withhold the porting of an end-users' number to another TSP because of unpaid bills or contractual arrangement. The type of number portability contemplated by this rule is service provider portability and not location portability. Failure to timely port a number subjects the refusing TSP to the fines and penalties as contained in Sections 301 J, K & L of these regulations.

B. The end-user customers of a CLEC shall not be required to dial the telephone number of an ILEC's end-user customer in any way other than that required of the ILEC's end-users.

C. The end-user customers of an ILEC shall not be required to dial the telephone number of a CLEC's end-user customer in any way other than that required to dial other end-users of the ILEC.

D. As of the effective date of these Regulations, and as an interim measure, remote call forwarding and direct inward dialing, as specified below, shall be made available to a CLEC according to the following guidelines: 1) within sixty (60) days of receipt of a request, an ILEC shall make the requested interim number portability solution available at a reasonable cost-based charge agreed to between the parties, or 2) if within sixty (60) days of receipt of a request, an agreement is not reached between the parties, the matter will be resolved by the Commission upon petition of either party. As part of the Commission's review of the matter, the ILEC shall provide TSLRIC and LRIC studies to the Commission which show the cost of providing the requested interim number portability solution. There is no mandate that the interim number portability solutions be provided by the ILEC to CLECs at its TSLRIC or LRIC of providing such services.

E. Once the costs studies specified in Section 901.C below are filed with the Commission, the Commission shall establish a reasonable cost-based rate at which an ILEC shall make the interim number portability solutions available to other TSPs. There is no mandate that the interim number portability solutions be provided by the ILEC to CLECs at their TSLRIC or LRIC of providing such services.

F. The CLEC is required to arrange for transport facilities to the central office where portability is sought. A CLEC shall reciprocate by offering number portability to an ILEC under the same arrangements.

G. In order to implement remote call forwarding, an ILEC's tariffed remote call forwarding service shall forward any call to a ported number to trunk groups associated with the CLEC. The

central office switch where the number resides should be programmed to reroute calls from the called number to a new number located in a different switch. Both the end-user customer of, and the caller to a remote call forwarding number should be unaware of the second number. Should technology change in the future this method may be modified by the Commission.

H. In order to implement the direct inward dialing option, all incoming calls to the ported number shall be routed to the ILEC end office. From there it should then be routed via the direct trunk group to the CLEC switch. Because direct inward dialing is normally provisioned in groups of 20 numbers, ILEC policies shall be changed to allow a single number to be identified as a direct inward dialing number. Should technology change in the future this method may be modified by the Commission.

I. At the earliest possible date all TSPs shall cooperate and use their best efforts to design, develop and deploy number portability databases, associated connections and/or other arrangements to achieve a permanent number portability solution.

J. The costs associated with development and deployment of a permanent number portability solution, such as a database, or other arrangement, shall be recovered from all TSPs using or benefiting from such a solution.

SECTION 901. Interconnection

A. Interconnection of the local telephone networks at reasonable rates is essential to local telephone competition. Competing networks shall be interconnected so that customers can seamlessly receive calls that originate on another carrier's network and place calls that terminate on another carrier's network without dialing extra digits, paying extra, or doing any other such action out of the ordinary that is not required when dialing on his/her own carrier's ILEC or CLEC network. TSPs should be interconnected with the ILECs in a manner that gives the TSPs seamless integration into and use of local telephone company signaling and interoffice networks in a manner substantially equivalent to that of the ILECs. Interconnection shall include access to switches, databases, signaling systems and other facilities or information associated with originating and terminating communications.

B. Based on current traffic and market conditions in the CMRS industry, mandatory CMRS-to-CMRS interconnection is not required by the interconnection obligations of this Section (901). However, providers of CMRS and PMRS are encouraged to develop interconnection arrangements among themselves and with other TSPs which foster the Commission policy of promoting the interconnection of competing networks so that customers can seamlessly receive and place calls originating and terminating on other carriers' networks.

C. Physical Interconnection for purposes of utilizing unbundled basic network components of ILEC networks:

1. Physical interconnect charges between and among TSPs shall be tariffed and based on cost information. The cost information derived from both TSLRIC and LRIC studies shall be provided to the Commission. This information will be used by the Commission to determine a reasonable tariffed rate. There is no mandate that interconnection services be provided by the ILEC to TSPs at its TSLRIC or LRIC of providing such services. As an interim measure, until such cost studies are completed and a decision rendered thereon by the Commission in Docket No. U-22022, consolidated with Docket No. U-22093, or other pertinent Commission proceeding, interim rates for unbundled network elements are hereby established as listed on attached Appendix "D". At such time as a final order issues in Docket No. U-22022, consolidated with Docket No. U-22093, rates will be re-calibrated accordingly.

2. ILECs must conduct within ninety (90) days from the effective date of these Regulations the TSLRIC and LRIC studies on all basic network service components and file such studies with the Commission. Basic network components shall include, without limitation, network access, switching and switch functions, transport (dedicated and switched) and ancillary services.⁶

⁶Re A Methodology to Determine Long Run Incremental Cost, 156 PUR 4th 1, Michigan

3. Physical interconnection tariffs shall be filed in accordance with Section 401.

4. TSPs shall utilize the "bill and keep" methodology as an interim compensation method for call transport and termination, pending establishment of permanent rates at such time as a final order issues in Docket No. U-22022, consolidated with Docket No. U-22093, or other pertinent Commission proceeding. Bill and keep arrangements compensate a carrier terminating a call originated with another carrier by requiring the carrier originating the call to, in turn, transfer and terminate calls originating from the other carrier. Under a bill and keep arrangement, no money changes hands.

D. Consistent with Section 252(a)(1) of the Telecommunications Act of 1996, upon receiving a request for interconnection, services, network elements, or reciprocal compensation pursuant to Section 251 of the Telecommunications Act, an ILEC may negotiate and enter into a binding agreement with the requesting TSP without regard to the costing standards set forth in subsection C of this Section. However, negotiated compensation arrangements for the exchange of local traffic shall provide for equal treatment and rates between competing TSPs. Rates of negotiated compensation arrangements shall be mutual, reciprocal, nondiscriminatory and cost-based, and shall be effective between the negotiating parties. Nothing in this section shall be interpreted as advocating or precluding the adoption of an in-kind rate or the adoption of an explicit rate as the negotiated compensation mechanism for the exchange of local traffic.

E. The Commission shall be notified in writing by the negotiating parties of the date the request for interconnection was submitted by the requesting TSP. The interconnection agreement shall include a detailed schedule of itemized charges for interconnection and each service or network component (element) included in the agreement. All agreements shall be submitted to the Commission for approval. Any party negotiating an agreement hereunder may, at any point in the negotiations, request the Commission to participate in the negotiation and to mediate any differences arising in the course of negotiation.

F. In accordance with Section 252(b) of the Telecommunications Act of 1996, either party to the negotiation may petition the Commission to arbitrate any open issue to the negotiation. When an ILEC and TSP are unable, through negotiations, to agree to rates for the interconnection of facilities and equipment, network elements and/or reciprocal compensation, any party to such negotiations may request the Commission to impose rates and conditions binding upon the parties to the agreement which comply with the results of the studies performed pursuant to subsection C.2 of this Section, and which are consistent with the mandates of Section 252(d) of the Telecommunications Act of 1996.

G. ILECs and CLECs shall file reports with the Commission Secretary on April 1st of each year which show by month the volume of local terminating traffic delivered to ILECs or CLECs during the previous year.

H. Interconnections arrangements established pursuant to Commission Docket No. U-18976 shall remain in effect until January 1, 1999, unless otherwise modified by the Commission.

I. TSPs shall be required to enter into reciprocal, mutual billing and collection agreements which ensure that each TSP can accept other TSPs' telephone line numbers based on nonproprietary calling cards; and, ensures that each TSP can bill and collect on collect calls and on calls billed to a third number served by another TSP.

J. The ILECs shall not limit the ability of a TSP to provide and carry operator services traffic.

K. CLECs shall have access to 911 connectivity where provided by an ILEC under the same terms and conditions enjoyed by the ILEC.

L. TSPs shall be afforded nondiscriminatory access to each other's databases as follows:

1. Directory Assistance and Line Information databases - TSPs shall be permitted to

Public Service Commission, Case No. U-10620, September 8, 1994.

input their customers' telephone numbers and any pertinent account data into the ILEC directory assistance and line information databases. TSPs shall also be permitted to access any customer's number from the TSP directory assistance and line information databases in order to provide directory assistance service to its customers or to obtain billing name and address.

2. Public Interest Services - TSPs shall have equal access to provide their customer numbers and address information to 911 providers, whether these providers are the ILEC or independent service bureaus.

3. TSP Service Databases - TSPs shall be provided access to TSP service databases (e.g., 800, line information, AIN) through signaling interconnection, with functionality, quality, terms, and conditions equal to that provided by the TSP to itself and its affiliates. TSPs will be charged tariffed rates for database queries equal to that charged to interexchange carriers for the same functions. The TSPs will impute the tariffed rates of database access to its services.

4. No TSP shall access the customer proprietary network information ("CPNI") of another interconnecting TSP for the purpose of marketing its services to the interconnecting company's customers. Likewise, no TSP shall access the CPNI of a company reselling its services, without permission of the reseller, for the purpose of marketing services to the reseller's customers.

M. TSPs shall develop mutually agreeable and reciprocal arrangements for the protection of their respective customer proprietary network information.

N. Nothing in this Section (901) shall be construed as authorizing the concentration of access lines in contravention of the prohibitions contained in Commission Orders U-16462 and U-17957-C.

O. All TSPs holding a certificate from the Commission are prohibited from providing interconnection services to non-certificated TSPs, unless the non-certificated TSP is exempt from the Commission's certification requirements pursuant to state or federal law or explicit Commission order.

P. A TSP shall permit other TSPs to interconnect with its network at a single point within a LATA, subject to the requirement that the TSP requesting interconnection shall pay multiple access switching charges in circumstances where multiple access tandems exist. A TSP may request more than one point of interconnection within a LATA.

Q. A TSP shall permit other TSPs to interconnect with its network at a "mid-span" meet rather than an access tandem or end office, subject to the requirement that the TSP requesting such interconnection shall bear all costs prudently incurred by the TSP providing such interconnection.

R. A CLEC shall not mix different traffic types (i.e., toll and local) over the same trunk group that interconnects with the ILEC's network until such time as technology is available to provide accurate billing or until such time as the ILEC agrees to such mixing of traffic or the ILEC is actually providing such service in Louisiana or elsewhere.

S. A TSP shall, when receiving misdirected service calls intended for another TSP, indicate to the customer that he has called the TSP in error and shall inform such customer that he should contact his local service provider. If requested by the customer to do so, the TSP shall provide the name and phone number of the customer's local service provider to the customer.

T. A TSP is not required to provide other TSPs with electronic access to its customer service records. TSPs are, however, directed to accept three-way calls from a customer and another TSP and shall, if the customer's consent is expressly given to the TSP, disclose the customer's current services and features. All TSPs shall implement an electronic "switch as is" process by which it shall switch a customer to another TSP with all services and features to which the customer is currently subscribing, upon receipt of appropriate customer authorization. The "switch as is" process described above shall result in no additional cost to the end user.

U. In circumstances where there is an open connection(s) or terminal(s) in a TSP's Network Interface Device ("NID"), another TSP shall be allowed to connect its loop(s) to such open connection(s) or terminal(s). In circumstances where there are no open connection(s) or terminal(s), TSPs may effect a NID-to-NID connection as described in the FCC's First Report and Order (Docket No. 96-98 Aug. 8, 1996), at Paragraphs 392 - 394.

V. TSPs shall provide other TSPs with access to their Ain facilities, but only subject to mediation, if such mediation is desired by the TSP whose facilities are being accessed.

W. Upon receipt of a bona fide request, an ILEC shall provide a requesting TSP with a customized electronic interface to its database. The ILEC shall provide the requested customized electronic interface within twelve (12) months of the date that the requesting TSP provides the ILEC with specifications for the interface it desires. All costs prudently incurred by the ILEC in developing this customized electronic interface shall be borne by the TSP requesting such interface. Any other TSP utilizing such electronic interface shall reimburse the requesting TSP for its cost incurred relative to the development of such electronic interface on a pro-rata basis determined on actual usage. The pro rata basis will be determined by the Commission when TSPs cannot agree on the relative usage.

SECTION 1001. Unbundling

A. All TSPs shall be able to purchase desired features, functions, capabilities and services promptly and on an unbundled and non-discriminatory basis from all other TSPs provisioning services within the State. TSPs shall be allowed to combine unbundled network elements in any manner they choose; however, when a TSP recombines unbundled elements to create services identical to the retail offerings of the TSP providing the unbundled elements, the prices charged to the requesting TSP for the rebundled services shall be the provisioning TSP's retail price less the wholesale discount established in Order NO. U-22020 (or any future modifications thereof), and offered under the same terms and conditions as the provisioning TSP offers such services. For purposes of this section, a TSP shall be deemed to be "recombining unbundled elements to create services identical to the provisioning TSP's retail offering" when the service offered by the requesting TSP contains the functions, features and attributes of a retail offering that is the subject of the provisioning TSP's properly filed and approved tariffs. Services offered by the requesting TSP shall not be considered "identical" when the requesting TSP utilizes its own switching or other substantive functionality or capability in combination with unbundled elements in order to provide a service offering. For example, a requesting TSP's provision of purely ancillary functions or capabilities, such as operator services, Caller ID, Call Waiting, etc., in combination with unbundled elements shall not constitute a "substantive functionality or capability" for purposes of determining whether the requesting TSP is providing "services identical to a provisioning TSP's retail offering."

B. Unless exempted pursuant to Section 202 above, an ILEC shall provide unbundled loops, ports, signaling links, signal transfer points, and signaling control points to a requesting TSP upon the effective date of these Regulations.

C. Unless exempted pursuant to Section 202 above, after the effective date of these Regulations, an ILEC shall provide additional unbundling within ninety (90) days of receipt of a bona fide request from a TSP. Additional unbundled basic network components shall include, but not be limited to:

1. Logical components within the loop plant, including loop distribution, loop concentration, and loop feeder.
2. End office and tandem switching.
3. Operator systems.
4. Common and dedicated transport links.

D. TSPs shall be able to interconnect with all unbundled basic network components at any technically feasible point within an ILEC's network. Access, use and interconnection of all basic network components shall be on rates, terms and conditions substantially equivalent to those an ILEC

provides to itself and its affiliates for the provision of exchange, exchange access, intraLATA toll and other ILEC services.

E. As specified in Section 901 above, rates for utilizing unbundled basic network components of ILEC networks and interconnection thereto shall be tariffed and based on cost information. There is no mandate that unbundled elements be provided by the ILEC to TSPs at its TSLRIC or LRIC of providing such elements. Interim rates for unbundled network elements are hereby established, as listed on attachment "D", subject to true-up upon the setting of permanent rates at such time as a final order issues in Docket U-22022 or other pertinent Commission proceeding.

F. ILECs shall put into place a service ordering, repair, maintenance, and implementation scheduling system for use by TSPs, which is equivalent to that used by the ILECs and their affiliates for their own retail exchange services. Data pertaining to service and facility availability shall be made available to TSPs in the same manner used by the ILECs and their affiliates.

G. ILECs shall include on a non-discriminatory basis the telephone numbers of CLEC customers in the ILECs' (including ILEC affiliates') "White Pages" residential and business listings, "Yellow Pages" listings, "Blue Pages" government listings, and directory assistance databases associated with the areas covered by such publications in which the CLECs provide local telecommunications services either through resale or its own facilities. CLEC customers requesting to be omitted from such directories shall be omitted.

H. CLECs shall provide to the ILEC (including ILEC affiliate) publishing "White Pages", "Yellow Pages", and "Blue Pages" directories the names, addresses and telephone numbers of all CLEC customers that do not wish to be omitted from such directories. The entries of CLEC customers in ILEC directories shall be interspersed alphabetically among the entries of the ILEC customers and shall be no different in style, size or format than the entries of the ILEC customers.

I. ILECs shall, upon request of a CLEC, provide White, Yellow and Blue Pages directories to CLECs' customers.

J. ILECs and CLECs providing local telecommunications services shall provide subscriber list information gathered in their capacities as local telecommunications services providers on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person or entity (including TSPs and TDPs) for the purpose of publishing directories in any format.

K. ILECs and CLECs providing local telecommunications services shall provide the names and addresses of non-published or non-listed subscribers gathered in their capacities as local telecommunications services providers on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person or entity (including TSPs and TDPs) for the purpose of directory delivery.

L. TSPs shall allow nondiscriminatory access to their poles by other TSPs for pole attachments on a first come/first serve basis and pursuant to Commission General Order dated December 17, 1984. A TSP may reserve to itself maintenance spare capacity. "Maintenance spare capacity" is capacity reserved on a pole in which the ILEC can place facilities quickly in response to emergency situations such as cut or destroyed cables. TSPs shall provide access to poles for pole attachments under standard licensing agreements complying with all pertinent rules and regulations of this Commission.

M. TSPs shall allow nondiscriminatory access to their conduits and rights-of-way by other TSPs on a first come/first serve basis for the provisioning of local telecommunications services. A TSP may reserve to itself maintenance spare capacity. "Maintenance spare capacity" is capacity reserved in a conduit in which the ILEC can place facilities quickly in response to emergency situations such as cut or destroyed cables. TSPs shall provide access to conduits and rights-of-way under standard licensing agreements complying with all pertinent rules and regulations of this Commission. TSPs shall make their right-of-way records available to other TSPs upon the execution of a mutually acceptable confidentiality agreement.

SECTION 1101. Resale

A. To encourage and promote competition in the local telecommunications markets, all facilities based TSPs shall make unbundled retail features, functions, capabilities and services, and bundled retail services available for resale to other TSPs on a nondiscriminatory basis.

B. No facilities based TSP may impose any restrictions on the resale of its unbundled retail features, functions, capabilities and services, and bundled retail services, except as follows:

1. Resale must be of the same class of service and category of customer. When TSPs purchase services for resale, they must do so on the same terms and conditions that the ILEC imposes on end users that purchase such services on a retail basis.
2. Contract Service Arrangements shall be made available at the Commission determined wholesale discount rate.
3. N11, 911, and E911 services are not subject to mandatory resale.
4. Link Up and Lifeline services are available for resale, with the restriction that TSPs shall offer such services only to those subscribers who meet the criteria the ILEC currently applies to subscribers of these services. TSPs shall discount the Link Up/Lifeline services by at least the same percentage as provided by the ILEC. TSPs shall comply with all aspects of any applicable rules, regulations or statutes relative to the providing of Link Up/Lifeline programs.
5. Short-term promotions, which are those offered for 90 days or less, are not subject to mandatory resale. Promotions that are offered for more than ninety (90) days must be made available for resale, at the Commission established discount, with the express restriction that TSPs shall only offer a promotional rate obtained from the ILEC for resale to those customers who would qualify for the promotion if they received it directly from the ILEC.
6. "Grandfathered Services" (service available only to a limited group of customers that have purchased the service in the past) are available for resale by TSPs to the same limited group of customers that have purchased the service in the past.

C. TSPs shall revise their existing tariffs to remove the prohibitions not allowed by this Section on the resale of unbundled retail features, functions, capabilities and services, and bundled retail services within thirty (30) days of the effective date of these Regulations. TSPs filing initial tariffs shall not include in such tariffs any prohibitions not allowed by this Section on resale of unbundled retail features, functions, capabilities and services, and bundled retail services.

D. During the transition to a competitive local telecommunications market, ILEC unbundled retail features, functions, capabilities and services, and bundled retail services, including vertical features, shall be tariffed and provided to other TSPs at reasonable wholesale rates. Avoided costs studies will be used by the Commission to determine costs avoided by an ILEC when an ILEC's unbundled retail features, functions, capabilities and services, and bundled retail services, including vertical features, are resold by another TSP, and to establish a wholesale discount percentage. An ILEC's tariffed wholesale resale rates will be determined by discounting the ILEC's retail rates by the wholesale discount percentage. There is no mandate that resold services be provided by an ILEC to TSPs at the ILEC's TSLRIC or LRIC of providing such services.

E. As of the effective date of these Regulations, and as an interim measure until the tariffed wholesale resale rates are developed pursuant to subsection D above, the wholesale resale rates of an ILEC shall be the ILEC's current tariffed retail rates reduced by 10% to encourage and promote competition in the local telecommunications markets and to reflect the ILEC's avoidance of retail costs, including but not limited to, sales, marketing and customer services associated with the resold items. ILEC services currently tariffed and provisioned below cost shall be available for wholesale resale in the manner described above. If deemed necessary by the Commission to ensure universal service, a subsidy mechanism may be established in Subdocket A of Docket U-20883, which would be available to an ILEC reselling services shown to be provisioned below cost for public interest.

purposes.

F. An ILEC shall make available non-discriminatory online access to the ILEC's operating systems at a reasonable cost-based charge per database dip to TSPs that desire to resell ILEC features, functions, capabilities and services. This access shall be made available according to the following guidelines: 1) within sixty (60) days of receipt of a bona fide request, the ILEC shall make the requested access available at a reasonable cost-based charge agreed to between the parties, or 2) if within sixty (60) days of receipt of a bona fide request, an agreement is not reached between the parties, or the ILEC responds that the request is not technically and/or economically feasible to provide, the matter will be resolved by the Commission upon petition of either party. As part of the Commission's review of the matter, the ILEC shall provide TSLRIC and LRIC studies to the Commission which show the cost of providing the requested access, including a detailed explanation of why the requested access is not technically or economically feasible to provide the requesting TSP.

G. Access shall be available to the following:

1. Direct, on-line access to the ILECs' mechanized order entry system. Access shall be considered adequate when the provided access permits the reseller to access an ILEC's mechanized order entry system to place initial orders, access information concerning service and feature availability, modify orders previously entered, schedule the installation of services and any necessary equipment, and to check on the status of all transactions that the reseller has initiated in a manner at least as efficient as the access provided the ILEC's own employees.
2. On-line access to numbering administration systems and to numbering resources.
3. Direct on-line access to the ILECs' trouble reporting and monitoring systems. Access is considered adequate if reseller can directly access remote line testing facilities, report service problems, schedule premise visits where required, and check the status of repairs. Arrangement must also provide for interception and automatic forwarding of repair calls placed by reseller customers to the reseller.
4. Customer usage data. Resellers must be provided timely on-line and printed reports pertaining to the Reseller's customers usage of ILEC local calling and switched access services.
5. To local listing databases and updates. Resellers should be able to add, modify and delete directory listings for the Reseller's customers via on-line access to the ILEC's directory database, and new reseller customers' listings should be available from Directory Assistance on precisely the same basis and in the same time frame as applies for new ILEC retail subscribers.

This access shall equal that provided to the ILECs' own personnel. The Commission and its Staff will monitor the progress, or lack thereof, made in this area, and, if deemed necessary after notice and hearing, will impose an additional transitional resale discount on an ILEC's features, functions, capabilities and services until an ILEC's operating systems are accessible by TSPs on the terms specified herein.

H. No TSP shall access the customer proprietary network information ("CPNI") of another interconnecting TSP for the purpose of marketing its services to the interconnecting company's customers. Likewise, no TSP shall access the CPNI of a company reselling its services, without permission of the reseller, for the purpose of marketing services to the reseller's customers.

I. All ILECs shall offer an optional, unbundled version of their retail services that allows the reseller to use its own operator services and directory assistance services.

J. All ILECs shall offer resold services to the resellers which utilize the ILEC's operators as "unbranded" services until such time as selective routing is technically feasible, as determined by the Commission.

K. An ILEC shall advise TSP reselling ILEC's services at least 45 days in advance of any

changes in the terms and conditions under which it offers telecommunications services to subscribers who are non-TSPs including, but not limited to, the introduction or discontinuance of any feature, function, service or promotion. To the extent that revisions occur between the time that an ILEC notifies TSPs reselling the ILEC's services of the change, the ILEC shall immediately notify such TSPs of the revisions consistent with the ILEC's internal notification process. The ILEC may not be held responsible for any cost incurred by a TSP as a result of such revisions, unless such costs are incurred as a result of the ILEC's intentional misconduct. The Commission reserves the right to impose a fine or other penalty, after notice and hearing, upon an ILEC for such intentional misconduct. TSPs are expressly precluded from utilizing the notice given by the ILEC under this section to market its resold offering of such services in advance of the ILEC.

L. Upon receipt of a bona fide request, an ILEC shall provide a requesting TSP with a customized electronic interface to its databases. The ILEC shall provide the requested customized electronic interface within twelve (12) months of the date that the requesting TSP provides the ILEC with specifications for the interface it desires. All costs prudently incurred by the ILEC in developing this customized electronic interface shall be borne by the TSP requesting such interface. Any other TSP utilizing such electronic interface shall reimburse the requesting TSP for its cost incurred relative to the development of such electronic interface on a pro-rata basis determined on actual usage. The pro rata basis will be determined by the Commission when TSPs cannot agree on the relative usage.

SECTION 1201. Consumer Protection.

A. All TSPs shall comply with all applicable statutes and Commission rules, regulations, orders and policies regarding customer billing, deposits, provisioning of service and the handling of complaints.

B. The following additional consumer protection rules shall apply to all TSPs providing local telecommunications services:

1. Any solicitation by or on behalf of a TSP to a customer to terminate his/her service with another provider and switch his/her service to a new TSP shall include current rate information of the new provider and all other information regarding the service(s) to be provided including, but not limited to the terms and conditions under which the new provider will provide the service(s). Upon request of a customer, a TSP shall provide the customer information pertaining to the technical specifications of the service(s) it is offering to the customer. All information provided shall be legible and printed in a minimum point size of type of at least 10 points. Failure to provide this information to the customer shall result in a fine of \$500 for each violation in addition to any other fine and/or penalties assessed.

2. In order to switch a customer from one TSP to another TSP, the new provider must obtain a signed and dated statement from the customer prior to the switch indicating that he/she is the subscriber of the telephone service for a particular telephone account and number, that he/she has the authority to authorize the switch of service to the new provider and that he/she does authorize the switch. This signed statement must be a separate or severable document whose sole purpose is to authorize the switch of the customer's TSP. The signed statement cannot be contained on the same document as promotional material, a registration to enter a contest or a form to contribute money to a charity.

Among other fines and/or penalties, the TSP making an unauthorized switch shall be subject to a fine not exceeding ten thousand dollars (\$10,000) per unauthorized switch, required to pay the costs of switching that customer back to the customer's previous provider and required to refund to the customer amounts paid to the provider during the unauthorized service period and extinguish any other amounts due by the consumer and not billed and/or paid. Additionally, the TSP shall be liable to the customer's previously selected provider in the amount equal to all charges paid by the customer to the unauthorized TSP after the unauthorized switch. All TSPs are responsible for the actions of their agents that solicit switches in an unauthorized manner and/or result in unauthorized switches.

3. A printed bill must be supplied to each customer at least once a month.
4. All billing for local telecommunications services must be presented for payment to the consumer within sixty (60) days of the date the consumer incurs the charge.
5. The customer's bill shall show the name of the TSP rendering service on behalf of the customer as opposed to the underlying carrier.
6. An address and a toll free telephone number for billing inquiries shall appear on each bill sent to the customer.
7. Interim dispute resolution procedures including interrupt and disconnect of services procedures, detailing how a customer can dispute a charge, lodge a complaint, and/or appeal to the Commission must be filed with the Commission and supplied to the customer upon request. The Commission will remain accessible to hear customer complaints as well as to resolve disputes among carriers regarding a customer complaint or problem. Final dispute resolution procedures are currently being considered by the Commission. When developed and approved, TSPs must comply with these procedures.
8. Customers must be given 30 days notice of any increase in price which is in excess of 5% of the current price.
9. No termination fees will be permitted for residential and single line business basic local services.
10. Unless fraud is suspected, no TSP can unilaterally and arbitrarily limit the amount of charges a customer can incur on his/her account regardless of whether the charges are for local, long distance or other toll charges unless the customer has a billed, outstanding balance due. If charges have been limited due to suspected fraud, the customer shall be informed in writing within two business days of the limits placed on the account and the reason for the limitations. Credit limits may be established when service is initiated, before charges are incurred or at any time upon an agreement between the TSP and customer.
11. No TSP may release nonpublic customer information regarding a customer's account or calling record unless required to do so by subpoena or court order.
12. Unless fraud is suspected, no TSP may unilaterally place a block on its customer's telephone service when a particular amount of charges have been incurred and the customer has not been presented the opportunity and a reasonable amount of time to pay or make other payment arrangements to pay the charges. If a block has been placed on a customer's telephone service due to suspected fraud, the customer shall be informed in writing within two business days of the block placed on his/her telephone and the reason for the block. For inmate pay phone systems, a customer's telephone may be blocked from the receipt of calls from an inmate facility only if the TSP has a blocking policy submitted in a tariff format approved by the Commission.

C. TSPs must file the service standard reports delineated in Section 302 in order to insure that consumers receive timely, adequate and quality service.

D. The arrival of competition will not necessarily obviate the need of those whose incomes entitle them to assistance from the Lifeline Fund or similar fund. When appropriations become available for the Lifeline Fund, all TSPs shall be required to participate therein.

E. Violation of any statute or Commission rule, regulation, order or policy applicable to regulated TSPs may result in the imposition of monetary fines, penalties and/ or the revocation of the a providers certificate.

SECTION 1301. Miscellaneous Provisions

A. Application. It is the intent of the Commission that these Regulations shall apply to all TSPs over which the Commission has regulatory authority. To the extent the Commission's regulatory authority over any particular TSP or over certain conduct or services offered or provided by any particular TSP is expressly preempted, then these Regulations shall be interpreted in a manner which recognizes all such preemptions so long as such preemption remains in effect.

B. All provisions of Order No. U-17949-N, dated October 18, 1991, are unaffected by these Regulations and shall remain in effect unless contrary to or inconsistent with the goals and/or provision(s) of these Regulations, in which case the provision(s) of these Regulations shall preempt and supersede all affected provisions of Order No. U-17949-N. However, the Commission hereby rescinds Ordering Paragraph Nos. "10", "11" and "12" of Order No. U-17949-N.

C. Severability. If a court of competent jurisdiction finds any provision of these Regulations to be invalid or unenforceable as to any TSP or circumstance, such finding shall not render that provision invalid or unenforceable as to any other TSPs or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of these Regulations in all other respects shall remain valid and enforceable. In addition, in the event any provision of these Regulations is stayed in connection with a judicial review of these Regulations, the remaining provisions of these Regulations shall remain valid and enforceable.

APPENDIX A

LOUISIANA BASIC SERVICES

Local Basic Service, including calling options.

Basic Local Service
Subscriber Line Charges
Statewide Rate Schedules (flat, measured and message)
Monthly Exchange Rates
Local Measured/Message Rated Service
Expanded Local Calling Area Service
Link-Up Service
Joint User Service (5 or less subscribers)
Local Option Calling Plans (LOS and LOSB)
Local Saver Service
Local Tele Thrift
Party Line Service
Local Exceptions
Public Telephone Service
Semi-Public Access Line

Local Ordering, Installation, and Restoral

Basic Service Connection
Trouble Determination Charges
Dual Service
Link Up

Other Services

Directory Listing
TouchTone
Customized Code Restriction
Blocking Service and Emergency Network Services
Directory Assistance (within local service area)
Local Operator Verification/Interrupt

APPENDIX B

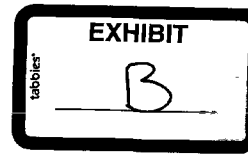
LOUISIANA INTERCONNECTION SERVICES

Interconnection Services

Basic Serving Arrangement
Carrier Common Line Access
Clear Channel Capability
Common Channel Signaling Access Capability
Common Switching Optional Features
Dedicated Network Access Line (DNAL)
Direct Inward Dialing (DID) or DID/Direct with LSBA
DID/Direct Outward Dialing (DOD) Access with LSBSA
DID or DID/DOD with BSA
800 Access Service
Line Side Basic Serving Arrangement (LSBSA)
Local Switching
Local Transport
Network Blocking Charge for Feature Group D
Network Access Register Package
Trunk Side Access Facility
Trunk Side BSA
900 Access Service
Analog Services
Dedicated Access Lines for TSPs
Custom Network Service
Digital Data Service
High Capacity Service
Metallic Service
Voice Grade Analog Service
Customer Owned Coin Operator Telephone (COCOT) Services Access Line
Interconnection for Mobile Service Providers (includes cellular mobile)

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NO. R-26173



Docket R- 26173, Louisiana Public Service Commission, ex parte. In re: BellSouth's provision of ADSL Service to end-users over CLEC loops- Pursuant to the Commission's directive in Order U-22252-E

(Decided at the December 18, 2002 Business and Executive Session.)

I. BACKGROUND

The Louisiana Public Service Commission Staff ("Staff") filed its Final Recommendation in Docket Number U-22252-E, *In re: BellSouth's Section 271 Pre-application*, on August 31, 2001. Among the numerous issues addressed therein was a discussion of MCI WorldCom Communications, Inc.'s ("WorldCom") contentions regarding BellSouth Telecommunication's, Inc. ("BellSouth") practices in line splitting arrangements.¹ Staff described its understanding of the policy as follows: "BellSouth will not provide a customer with its retail DSL service unless that customer also purchases its voice service from BellSouth."² After discussing the matter in greater detail, Staff ultimately recommended the following:

That the Commission order BellSouth to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice service under the same terms and conditions that BellSouth offers the high frequency portion of its loops in line sharing arrangements. Staff further recommends that the CLEC shall be prevented from charging BellSouth for use of its UNE loop. Any issues regarding implementation of this recommendation shall be referred to the regional line sharing/line splitting collaborative for review and resolution. BellSouth may petition the Commission for a stay of this requirement upon presentation of evidence regarding substantial operational issues that must be resolved.³

Staff's Final Recommendation, in docket U-22252, Subdocket E, was considered by the Louisiana Public Service Commission ("LPSC", "Commission") at its September 19, 2001 Business and Executive Session. At that Session, Commissioner Blossman moved to adopt Staff's Final Recommendation, with a few modifications, one of which directly addressed the above quoted section. The motion directed Staff to further study the issue of whether BellSouth should be required to provide its ADSL service to end users over

¹ Staff's Final Recommendation, Docket U-22252-E, pages 86-87.

² Id at 86.

³ Id at 113.

the high frequency portion of the same loop being used by a CLEC to provide voice services. The motion was unanimously adopted by the Commission and memorialized in Order U-22252-E, issued September 21, 2001.

In compliance with the Commission's directive, Staff opened and published the following in the Commission's Official Bulletin dated December 7, 2001 Docket R-26173,

Pursuant to the Commission's directive in Order U-22252-E, Staff was to further study the issue of whether BellSouth Telecommunications, Inc. should be required to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice services.

Parties were given 25 days to intervene and/or file comments in the docket. Interventions and/or initial comments were received from the following parties: ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom ("DeltaCom"), Xspedius Corporation ("Xspedius"), Cox Louisiana Telecom, L.L.C., d/b/a Cox Communications ("Cox"), NewSouth Communications Corporation ("NewSouth"), Access Integrated Networks, Inc. ("Access"), BellSouth, KMC Telecom, Inc. ("KMC") and the Southeastern Competitive Carriers Association ("SECCA").

Following the receipt of initial comments, Staff received both formal and informal requests from the interveners to file additional/reply comments. By notice dated May 9, 2002, Staff granted the parties the opportunity to file additional comments by May 24, 2002. The following parties provided additional/reply comments: BellSouth, KMC, SECCA and WorldCom. Access, DeltaCom, NewSouth and Xspedius jointly filed reply comments.

After thoroughly reviewing all initial and reply comments, Staff issued a Proposed Recommendation on July 10, 2002. In order to clarify the opportunity for exceptions and replies to the recommendation, a Procedural Schedule and Order was issued on July 25, 2002. Exceptions were received only from BellSouth. Reply comments were received from KMC, WorldCom and SECCA and jointly from DeltaCom, Access, NewSouth and Xspedius. Additionally, an informal technical conference was held on September 3, 2002, with representatives from all of the above parties present. In connection with its review, Staff prepared a detailed summary of all initial and reply comments which was included in the Proposed Recommendation issued

July 10, 2002. A short summary of the exceptions and replies to the Proposed Recommendation are included herein.

II. JURISDICTION

The powers and duties of the Louisiana Public Service Commission are contained in Article IV § 21 of the Louisiana Constitution of 1974. As stated therein, the Commission has the authority to:

“regulate all common carriers and public utilities and has all other regulatory authority as provided by law. The Commission shall adopt and enforce reasonable rules, regulations and procedures which are necessary for the discharge of its duties including other powers and duties as provided by law.”

Pursuant to its constitutional authority, the Commission adopted the Regulations for Competition in the Local Telecommunications Market (“Local Competition Regulations”, “Regulations”)⁴, as most recently amended by the April 5, 2000 General Order (“General Order”). As stated in the Preamble to the Regulations,

Through the development of effective competition, which promotes the accessibility of new and innovative services at non-discriminatory prices consumers can and are willing to pay, and which results in wider deployment of existing services at competitive prices, the public interest will be promoted.

Section 201. A. of the Local Competition Regulations describes the public policy as follows:

(T)he Louisiana Public Service Commission hereby finds, determines and declares that the promotion of competition in all local telecommunications markets in Louisiana is in the public interest.

In furtherance of the above stated goal to promote competition in all local telecommunications markets in Louisiana, this Commission has initiated a number of rule-making proceedings. One such proceeding, Docket U-22252-C *In re: BellSouth Telecommunications, Inc. Service Quality Measurements*, established performance measurements to monitor the service BellSouth provides to its competitors. No less than four orders have been issued in that docket, all of which have fostered the Commission's goals of promoting competition. Further, Docket U-24714, Subdocket A, *In re: Final Deaveraging of BellSouth Telecommunications, Inc., UNE Rates*, established new cost

⁴ The actual Regulations are contained in “Appendix B” to the General Order.

based rates for UNEs available to CLECs. Staff notes that following the issuance of the Order in that docket, many new competitors have entered the market. Additionally, in connection with Staff's review of BellSouth's 271 pre-application filing in Docket U-22252-E, several recommendations were made to further promote competition.

III. SUMMARY OF STAFF'S PROPOSED RECOMMENDATION

In Docket U-22252-E, Staff made the following recommendation:

That the Commission order BellSouth to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice service under the same terms and conditions that BellSouth offers the high frequency portion of its loops in line sharing arrangements. Staff further recommends that the CLEC shall be prevented from charging BellSouth for use of its UNE loop. Any issues regarding implementation of this recommendation shall be referred to the regional line sharing/line splitting collaborative for review and resolution. BellSouth may petition the Commission for a stay of this requirement upon presentation of evidence regarding substantial operational issues that must be resolved.

When the matter was considered at the Commission's September 2001 Business and Executive Session, the Commission voted to accept Staff's Recommendation, with Staff directed to determine whether ADSL service could be added to UNE lines in the future.⁵

Order U-22252, E memorialized the Commission's vote, instructing Staff to,

further study the issue of requiring BellSouth to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice service until such time as the operational and policy issues associated therewith are fully explored.⁶

Based on the above, a presumption existed that Staff's Recommendation in Docket U-22252, E should be adopted, absent any "operational or policy issues" prohibiting its implementation. Comments received from the parties suggested additional concerns must also be addressed, as evidenced by comments received relative to possible jurisdictional and technical issues. Neither the vote of the Commission, nor the directive of the order, suggested any such issues were a concern prior to this docket being opened. Nonetheless, to insure all issues are thoroughly explored, Staff's Proposed Recommendation addressed not only "operational and policy" issues, but jurisdictional

⁵ See Official Transcripts of the September 21, 2001 Business and Executive Session.

⁶ Order U-22252, E.

and technical issues as well. Based on the following conclusions, it was Staff's opinion that the recommendation set forth in docket U-22252-E be reaffirmed and adopted.

A. Policy Issues

Before addressing any "policy" arguments made by the parties, Staff reminded that parties that this Commission's policy, as stated in the Local Competition rules, is to promote competition in all telecommunications markets. Adopting Staff's Recommendation in U-22252, subdocket E will promote that goal, by allowing more end-users to choose an alternative voice provider without fear of losing their DSL service. BellSouth's policy of refusing to provide its DSL service over CLEC voice loops is clearly at odds with the Commission's policy to encourage competition. Likewise, BellSouth's contention that such a regulation would diminish competition in the DSL market is not consistent with the comments received.

Pursuant to its current DSL policy, BellSouth "simply chooses not to sell DSL service that work on CLEC loops."⁷ As summarized in KMC's comments, BellSouth's policy actually deters customers from switching to other providers, thus hindering competition not only in the voice market, but the DSL market as well. Various other examples of the anti-competitive effects of this policy were contained in the CLEC's comments⁸, including (1) disconnection of BellSouth DSL service when an end-user changes voice providers, (2) placing codes on Customer Service Records ("CSRs") that must be removed before transferring service, (3) placing DSL service on primary lines in multi-line situations without explaining the consequences to the end-user and (4) transferring back voice service if BellSouth's DSL is subsequently placed on the primary line. Interestingly enough, the only of the above examples BellSouth addressed in its reply comments is the primary line issue, referring Staff to the FCC's 271 order. BellSouth's failure to even dismiss or deny the other examples caused Staff grave concern, as any of the above puts a voice CLEC in a clear competitive disadvantage by creating more "hoops" a CLEC must jump through to provide voice service, as outlined in Staff's summary of the individual comments.

⁷ See reply affidavit of Thomas G. Williams filed June 25, 2001 in Docket U-22252-E at page 11.

⁸ A detailed summary of the initial comments filed by all parties is contained in Staff's Proposed Recommendation issued in this docket on July 10, 2002.

Rather than discuss the above concerns, BellSouth argued the Commission should make inquiries relative to the investments, personnel and taxes CLECs have made in Louisiana before it makes a decision. Staff was at a loss as to how any of this information, if obtained, would be of any benefit to the Commission or Staff. In furtherance of this position, BellSouth filed a Motion for Leave to Propound Data Requests on June 28, 2002. Staff was concerned this filing could not only result in an unnecessary delay in the issuance of Staff's Recommendation, but also could broaden the scope of the docket beyond the Commission's directive.

In conclusion, the Commission's policy is to support competition in all telecommunications markets, including local voice service. The anti-competitive affects of BellSouth's policy are at odds with the Commission's, and thus should be prohibited.

B. Jurisdictional Issues

While "jurisdictional issues" were not contemplated in the Commission's directive, Staff believed it was important to address this Commission's jurisdiction and how it is consistent with that of the FCC. BellSouth's argued the LPSC has no jurisdiction to regulate the provisioning of its DSL service over CLEC voice loops. This argument is couched on the presumption that Staff's recommendation would essentially amount to LPSC regulation of DSL, which is a federally tariffed service. This argument fails to consider the basis of Staff's Recommendation in U-22252-E, i.e. the anticompetitive effect BellSouth's practice has on CLEC voice customers in violation of relevant LPSC, as well as FCC, rules and regulations, by restraining voice competition. Despite BellSouth's arguments to the contrary, Staff's Recommendation in docket U-22252-E is entirely consistent with the Telecommunications Act, the Line Sharing Order and Line Sharing Remand Order.

The prevailing theme of the Local Competition Regulations is the Commission's goal of promoting competition in the local telecommunications market. Conversely, any practice that has a detrimental effect on competition is inconsistent and should be rectified. Further, Section 701 of the Local Competition Regulations, which established BellSouth's Consumer Price Protection Plan, provides in Section 701 G. 10, "Tying

arrangements are prohibited.”⁹ Staff concluded that not only is BellSouth’s current practice regarding the provisioning of its DSL service anti-competitive, it is also a “tying arrangement.” Simply put, BellSouth, as the dominant voice and DSL provider in Louisiana, is tying the provision of its DSL service to its voice service. Only end-users who receive voice service from BellSouth, or end-users of a CLEC reselling BellSouth’s voice service, may receive BellSouth DSL.

Claims that various RBOCs are behaving in an anti-competitive matter concerning the provision of their DSL services to voice service are not new. In support of their policy, RBOCs have continuously argued the provision of DSL is federally regulated and as such cannot be addressed by state commissions. WorldCom’s first raised this issue in Louisiana in its reply comments filed in Docket U-22252-E.¹⁰ To Staff’s knowledge, the RBOC argument has never been successful, as each state commission addressing DSL related issues has done so based on its authority to promote voice competition and address anti-competitive behavior.¹¹

In addition to orders cited by the CLECs, the Michigan Public Service Commission, in an order issued in Case No. U-13193 on June 6, 2002 (“Michigan Order”), determined that Ameritech’s practices concerning the provisioning of its DSL services were anti-competitive and therefore violated state law.¹² As was the case in the Florida Order, the Michigan Commission addressed issues identical to those being considered in this docket. Staff’s Recommendation in U-22252-E, and its recommendation herein, are consistent with both orders.

BellSouth’s was correct in saying the FCC’s Line Sharing Order did not create an obligation that ILECs continue to provide DSL service when they are no longer the voice provider.¹³ However, neither the Line Sharing Order, nor the Line Sharing Remand Order prohibited states from regulating anti-competitive behavior or illegal tying arrangements. In fact, the FCC specifically stated in the Line Sharing Remand Order,

To the extent that AT&T believes that specific incumbent behavior
constrains competition in a manner inconsistent with the

⁹ A similar provision applying to all certificated TSPs is contained in Section 301 J. 2 of the Local Competition Regulations.

¹⁰ Staff’s recommendation in U-22252-E was based on its consideration of those initial comments, as well as BellSouth’s subsequent reply.

¹¹ See California Order at pages 6-11, Florida Order at pages 7-9.

¹² See Michigan Order at page 15.

¹³ As a reminder, the DC Circuit has vacated the Line Sharing Order.

Commission's line sharing rules and/or the Act itself, we encourage AT&T to pursue enforcement action.

Clearly the above pronouncement grants this Commission authority to rule on the issue before it without infringing on the FCC's jurisdiction, as the LPSC is acting in furtherance of its goal (and the FCC's) to promote competition, not attempting to regulate DSL service.

Staff concluded that any perceived conflicts between FCC and LPSC jurisdiction raised by BellSouth should be of no concern to this Commission, as it clearly has the authority to determine BellSouth's practices are contrary to LPSC rules and regulations, without fear of infringing on the FCC's jurisdiction or non-regulated areas.

C. Technical Issues

Staff's discussion of technical issues will be brief. Simply put, there is no technical reason set forth by BellSouth or the CLECs as to why BellSouth's DSL service cannot be provisioned over CLEC voice loops. As mentioned throughout this recommendation, BellSouth's current practice is based on an internal policy decision.

D. Operational Issues

As set forth in Staff's Recommendation in docket U-22252-E, BellSouth's obligation to provide its DSL service over CLEC voice loops could be stayed if BellSouth provided evidence of "substantial operational issues" that must be resolved. Essentially this docket gives the parties the opportunity to review any such operational issues prior to any Commission Order being issued.

As summarized herein, all operational issues addressed by BellSouth in its comments involve additional costs it believes it would incur if it loses control of the local loop, but is still required to provide its DSL service. In response to these operational issues, Staff first notes that in U-22252-E, Staff recommended that CLECs not be allowed to charge BellSouth for use of its UNE loops. Despite the fact that SECCA has suggested otherwise, Staff had no intention of modifying that portion of the recommendation. Therefore, any concerns relative to costs assessed to BellSouth for using the CLEC loop are moot.

Interestingly enough, the remainder of operational issues raised by BellSouth are arguably the same operational issues that exist for competitive DSL providers that do not control the voice portion of the loop. Any DLEC or CLEC providing DSL services only (i.e., one that is not also the voice provider) is in the same position. However, BellSouth argued such an arrangement causes operational issues that would drive up the costs of its DSL. As an alternative, BellSouth proposed CLECs convert UNE loops of BellSouth DSL customers to resale, thereby allowing BellSouth to continue controlling the loop. As evidenced by the comments, not only was such a suggestion infeasible to some CLECs, it would only increase the costs and operational issues associated with providing voice service. Staff was not convinced that any of the operational issues provided by BellSouth were substantial enough to warrant it being absolved of providing its DSL service to CLEC voice customers. If anything, they suggested to Staff that BellSouth is leveraging position as the dominant voice provider with control of the network, to give itself another advantage over CLEC DSL providers.

Accordingly, Staff reemphasized its U-22252-E recommendation to make it clear that BellSouth should not only be required to provision its DSL service to end-users over CLEC voice loops, but must do so utilizing the same non-discriminatory rates, terms and conditions it provides such services to its voice customers, as BellSouth's comments suggest it may simply raise the price of DSL to CLEC voice customers in such a fashion that Staff's Recommendation is rendered moot.

IV. SUMMARY OF BELL SOUTH'S EXCEPTIONS TO STAFF'S PROPOSED RECOMMENDATION

BellSouth's exceptions to Staff's Proposed Recommendation were filed on August 12, 2002, along with three affidavits. As set forth in the filing, BellSouth took exception with Staff's Recommendation in six specific areas, arguing: 1. The Commission's Rules of Practice and Procedure do not authorize Staff to proceed in the manner it did in this docket; 2. The Commission does not have jurisdiction to alter or otherwise regulate BellSouth's Interstate Services; 3. Staff's Presumption that the Commission has prejudged this matter is wholly inappropriate; 4. CLEC Profit Margin, not customer choice is the core issue; 5. Operational issues exist and 6. KMC's

Complaints referred to by Staff are unfounded. Rather than provide an exhaustive summary of these comments, Staff responded to the exceptions in its Final Recommendation.

V. CLEC REPLY COMMENTS

As mentioned infra, reply comments to BellSouth's Exceptions were received from WorldCom, SECCA, KMC, Access, DeltaCom, Xspedius and NewSouth. These reply comments addressed BellSouth's exceptions, provided support for the adoption of Staff's Proposed Recommendation, and included affidavits and other exhibits as attachments. No exceptions to Staff's Proposed Recommendation were received from the CLECs. Similarly as with BellSouth's comments, rather than providing an exhaustive summary of the reply comments, Staff addressed the comments in its Final Recommendation.

VI. INFORMAL TECHNICAL CONFERENCE

Following receipt of BellSouth's exceptions and the replies thereto, Staff presided over an informal technical conference. Representatives of BellSouth, several CLECs, as well as Commissioners Blossman and Sittig and Commission Staff, were present at the technical conference. The parties were given an opportunity to respond to the latest filings, ask and field questions and provide further support for their respective positions. Particularly, BellSouth witness Ruscilli went into detail explaining why he concluded in his affidavit that resale is a valid option for the CLECs and BellSouth witness Milner explained his affidavit relative to Operational Issues. Following BellSouth's presentations, CLEC witnesses were given the opportunity to respond and/or ask questions of the witnesses. Questions were also posed by the Commissioners and Staff. Specifically questions were asked as to who would invest in order to ensure the entire state has DSL available. No affirmative response to deploy was received from the CLECs. In addition to the exceptions and replies, Staff considered this information in support of its recommendation.

VII. STAFF'S FINAL RECOMMENDATION

As stated herein, Staff's role in this docket was to determine whether any policy or operational issues existed that would prohibit BellSouth from providing its ADSL service over CLEC loops. That is precisely what Staff considered in detail in its Proposed Recommendation, with Staff ultimately concluding that no such operational or policy issues existed. As no exceptions were provided by the CLECs, Staff's Final Recommendation focused on BellSouth's Exceptions and any impact they had on Staff's Proposed Recommendation.

A. Staff's Reply to Exceptions 1 and 3.

Interestingly, BellSouth began its exceptions not by questioning Staff's Proposed Recommendation, but by questioning the rulemaking procedure employed. BellSouth concluded the procedure violated not only the Commission's Rules of Practice and Procedure, but also Article IV § 21 of the Louisiana Constitution. BellSouth suggested as a remedy the Commission opening up a docket to establish concrete rules for such proceedings. A simple review of recent Commission history would question the correctness of this assumption. Staff, through the undersigned counsel, has been either counsel of record or co-counsel of record in numerous Commission rulemaking proceedings (and all of which included BellSouth as a party) in which essentially the same procedural rules were followed, without objection from BellSouth or others.¹⁴

Further troubling was BellSouth's statement that it was under the impression "Staff would consider the issues presented in this docket in a full and comprehensive manner as the 271 Order requires."¹⁵ Staff assumed BellSouth's was suggesting Staff's consideration of rounds of comments and exhibits received by the parties, numerous informal meetings addressing the issues, review of relevant FCC, LPSC and other PSC decisions, the result of which was a 24 page recommendation, was insufficient. The presumption referred to by Staff, to which BellSouth takes exception, did not in any way diminish the amount of consideration, time and effort that went into Staff's

¹⁴ U-23445, U-23446, U-24050, U-25754, R-26171 and R-26438 were all Rulemaking dockets involving Telecommunications issues. In most instances, fewer comments were received than allowed in this proceeding. Further, BellSouth did not question the procedure followed herein until after Staff's Recommendation, which took a contrary position, was issued.

¹⁵ BellSouth's Exceptions to Staff's Proposed Recommendation at page 5.

Recommendation. It was only after consideration of all information contained in this record that Staff issued its Proposed Recommendation. Nonetheless, any attempts to suggest the Procedure followed herein by Staff were inconsistent with the Commission's Rules and Regulations should be simply dismissed as an effort to create additional issues the Commission must consider.

B. Staff's Reply to Exception 2.

BellSouth also raised many of the same jurisdictional issues contained in its original comments in its exceptions. BellSouth suggested the effect of Staff's recommendation would be the imposition of disincentive to the deployment of DSL service, rather than the goal of promoting the accessibility of new and innovative services. Such a statement creates a slippery slope for Staff (and BellSouth) to tread upon. How can the Commission promote the deployment of a service over which BellSouth argues it has no jurisdiction over? Should Staff assume it is ok for the Commission to establish rules relative to interstate services, provided they only benefit the provider of such services?

By no means was Staff suggesting this recommendation would amount to a regulation of DSL services, however, it is interesting that BellSouth would have the Commission believe the Recommendation would hinder the further deployment of such services. According to BellSouth's experts, approximately 70-75% of BellSouth customers in Louisiana have access to its DSL, while only 5% or so subscribe to it. Staff argued if any disincentive exists prohibiting BellSouth from further deploying its services, it was the demand for the product, not any order of this Commission. Staff's Recommendation, if adopted, would only require BellSouth to continue providing its DSL service to customers currently receiving the service when they switch voice providers, and to voice customers of CLECs opting to receive the service, essentially meaning BellSouth will derive more revenue for its non-regulated service, in addition to furthering competition in the voice market.

BellSouth also objected to Staff's classification that BellSouth is "tying" its DSL service to its voice service, suggesting Staff has transformed this proceeding into an enforcement action. BellSouth's suggestion disregards the fact that Staff had

recommended no penalties, fines or other administrative remedies be levied against BellSouth, only that it (BellSouth) rectify any potential anti-competitive behavior. Staff agreed with SECCA that this Commission has the jurisdiction to rectify any potentially anti-competitive behavior without the necessity of instituting an enforcement action.

C. Staff's Reply to Exception 4.

In this exception, BellSouth provided arguments and testimony in support of its position that resale is a valid option for the CLECs, further arguing CLECs simply choose not to use it for cost reasons. While Staff appreciated BellSouth's comments relative to CLEC profit margins and the work done by Mr. Ruscilli relative to the costs associated with UNE-P versus resale, it respectfully disagreed with the conclusion. UNE-P has been recognized by this Commission as a valid form of competition, most recently in BellSouth's 271 application. As long as it is treated as such, CLECs should have the choice to determine how they choose to compete, rather than the choice being made by their competition. Not only does BellSouth's "Resale Option" restrict the mode of entry a CLEC can use, it also restricts the service offering that can be made to those services contained in BellSouth's tariffs. For example, a CLEC such as WorldCom could not offer its "Neighborhood" plan via resale because BellSouth provides no similarly bundled service it can resell.

D. Staff's Reply to Exception 5.

Despite what is suggested by the CLECs in their reply comments, Staff never determined there were no operational issues that may be incurred by BellSouth. Staff simply concluded that none of the issues were substantial enough to warrant BellSouth being absolved from following Staff's Proposed Recommendation. BellSouth's exceptions and affidavits shed further light on the potential operational issues it believes it will encounter if forced to implement Staff's Recommendation. While BellSouth qualified these operational issues as being burdensome, Staff believed the actual effect of the operational changes must specifically be determined before they absolve BellSouth from implementing Staff's Recommendation. For example, at least two of the operational issues raised by Mr. Milner in his affidavit were rendered moot by Staff's

Proposed Recommendation wherein Staff concluded that CLECs should be prevented from charging BellSouth for use of the high frequency portion of the loop. While there is some overlap, the majority of the remaining operational issues would only apply when BellSouth is required to provide its DSL over CLEC voice loops, not UNE-P. Nonetheless, based on the above, Staff was willing to clarify its recommendation to the extent that the operational issues related specifically to UNE loops (facilities based providers) are later determined to be overly burdensome. If such a determination were made, Staff would recommend that BellSouth be required to provide its DSL service only to CLEC customers via UNE-P, provided that BellSouth shall not prematurely disconnect voice and data service to a customer converting service from BellSouth to a facility based CLEC. Should a premature disconnection occur, BellSouth shall be fined up to \$10,000.00 per occurrence, as well as provide a full refund to the customer for the previous month's voice and data service. Additionally, Staff noted that due to the regional nature of BellSouth's Operational Support Systems, any final decision of a Commission in the BellSouth region on this issue would require BellSouth to make the necessary operational changes, thereby re-instituting Staff's original recommendation.

E. Staff's Reply to Exception 6.

Finally, BellSouth suggests that Staff wrongfully relied on KMC's allegations, suggesting KMC has a history of make allegations without any factual support. Such a suggestion is obviously refuted by the information provided to Staff counsel by KMC in Docket U-22252-E and the series of Collaborative workshops, which were referenced in support of the finding. Copies of those filings are contained herein.

VIII CONCLUSION AND COMMISSION CONSIDERATION

For the reasons stated above, Staff recommended that its recommendation, as contained in docket U-22252-E, and as modified in this docket, be adopted. The matter was considered at the Commission's December 18, 2002 Business and Executive Session. Following oral argument, Commissioner Field moved to accept Staff's Final Recommendation, adding the following provision: "The Louisiana Public Service Commission affirms that it does not regulate the rates or pricing of BellSouth's wholesale


or retail DSL service." Following a second by Commissioner Sittig, Commissioner Blossman read a letter from Congressman Billy Tauzin into the record. Roll was taken, with Commissioners Field, Sittig and Dixon voting yes, Commissioner Blossman voting no and Commissioner Owen absent.

IT IS THEREFORE ORDERED THAT

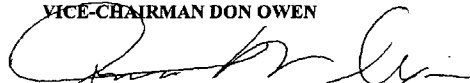
1. Staff's Final Recommendation, for the reasons set forth herein, is adopted.
2. The Commission affirms that it does not regulate the rates or pricing of BellSouth's wholesale or retail DSL service.
3. This Order shall be effective immediately.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA**

January 24, 2003

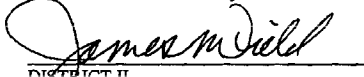

DISTRICT I
CHAIRMAN JACK "JAY" A. BLOSSMAN

/S/ DON OWEN ABSENT
DISTRICT V
VICE-CHAIRMAN DON OWEN


DISTRICT III
COMMISSIONER IRMA MUSE DIXON

Dale Sittig
DISTRICT IV
COMMISSIONER C. DALE SITTIG


LAWRENCE C. ST. BLANC
SECRETARY


DISTRICT II
COMMISSIONER JAMES M. FIELD

LOUISIANA PUBLIC SERVICE COMMISSION

CLARIFICATION
ORDER R-26173-A

Docket R- 26173, Louisiana Public Service Commission, ex parte. In re: BellSouth's provision of ADSL Service to end-users over CLEC loops- Pursuant to the Commission's directive in Order U-22252-E.

(Decided at the March 19, 2003 Business and Executive Session.)
(Clarifies Order R-26173 dated January 24, 2003)

I. BACKGROUND

The Louisiana Public Service Commission Staff ("Staff") filed its Final Recommendation in Docket Number U-22252-E, *In re: BellSouth's Section 271 Pre-application*, on August 31, 2001. Among the numerous issues addressed therein was a discussion of MCI WorldCom Communications, Inc.'s ("WorldCom") contentions regarding BellSouth Telecommunication's, Inc. ("BellSouth") practices in line splitting arrangements.¹ Staff described its understanding of the policy as follows: "BellSouth will not provide a customer with its retail DSL service unless that customer also purchases its voice service from BellSouth."² After discussing the matter in greater detail, Staff ultimately recommended the following:

That the Commission order BellSouth to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice service under the same terms and conditions that BellSouth offers the high frequency portion of its loops in line sharing arrangements. Staff further recommends that the CLEC shall be prevented from charging BellSouth for use of its UNE loop. Any issues regarding implementation of this recommendation shall be referred to the regional line sharing/line splitting collaborative for review and resolution. BellSouth may petition the Commission for a stay of this requirement upon presentation of evidence regarding substantial operational issues that must be resolved.³

Staff's Final Recommendation, in docket U-22252, Subdocket E, was considered by the Louisiana Public Service Commission ("LPSC", "Commission") at its September 19, 2001 Business and Executive Session. At that Session, Commissioner Blossman moved to adopt Staff's Final Recommendation, with a few modifications, one of which directly addressed the above quoted section. The motion directed Staff to further study the issue

¹ Staff's Final Recommendation, Docket U-22252-E, pages 86-87.

² Id at 86.

³ Id at 113.

of whether BellSouth should be required to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice services. The motion was unanimously adopted by the Commission and memorialized in Order U-22252-E, issued September 21, 2001.

In compliance with the Commission's directive, Staff opened and published the following in the Commission's Official Bulletin dated December 7, 2001 Docket R-26173,

Pursuant to the Commission's directive in Order U-22252-E, Staff was to further study the issue of whether BellSouth Telecommunications, Inc. should be required to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice services.

Parties were given 25 days to intervene and/or file comments in the docket. Interventions and/or initial comments were received from the following parties: ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom ("DeltaCom"), Xspedius Corporation ("Xspedius"), Cox Louisiana Telecom, L.L.C., d/b/a Cox Communications ("Cox"), NewSouth Communications Corporation ("NewSouth"), Access Integrated Networks, Inc. ("Access"), BellSouth, KMC Telecom, Inc. ("KMC") and the Southeastern Competitive Carriers Association ("SECCA").

Following the receipt of initial comments, Staff received both formal and informal requests from the interveners to file additional/reply comments. By notice dated May 9, 2002, Staff granted the parties the opportunity to file additional comments by May 24, 2002. The following parties provided additional/reply comments: BellSouth, KMC, SECCA and WorldCom. Access, DeltaCom, NewSouth and Xspedius jointly filed reply comments.

After thoroughly reviewing all initial and reply comments, Staff issued a Proposed Recommendation on July 10, 2002. In order to clarify the opportunity for exceptions and replies to the recommendation, a Procedural Schedule and Order was issued on July 25, 2002. Exceptions were received only from BellSouth. Reply comments were received from KMC, WorldCom and SECCA and jointly from DeltaCom, Access, NewSouth and Xspedius. Additionally, an informal technical conference was held on September 3, 2002, with representatives from all of the above parties present. In connection with its review, Staff prepared a detailed summary of all

initial and reply comments which was included in the Proposed Recommendation issued July 10, 2002. A short summary of the exceptions and replies to the Proposed Recommendation are included herein.

II. JURISDICTION

The powers and duties of the Louisiana Public Service Commission are contained in Article IV § 21 of the Louisiana Constitution of 1974. As stated therein, the Commission has the authority to:

“regulate all common carriers and public utilities and has all other regulatory authority as provided by law. The Commission shall adopt and enforce reasonable rules, regulations and procedures which are necessary for the discharge of its duties including other powers and duties as provided by law.”

Pursuant to its constitutional authority, the Commission adopted the Regulations for Competition in the Local Telecommunications Market (“Local Competition Regulations”, “Regulations”)⁴, as most recently amended by the April 5, 2000 General Order (“General Order”). As stated in the Preamble to the Regulations,

Through the development of effective competition, which promotes the accessibility of new and innovative services at non-discriminatory prices consumers can and are willing to pay, and which results in wider deployment of existing services at competitive prices, the public interest will be promoted.

Section 201. A. of the Local Competition Regulations describes the public policy as follows:

(T)he Louisiana Public Service Commission hereby finds, determines and declares that the promotion of competition in all local telecommunications markets in Louisiana is in the public interest.

In furtherance of the above stated goal to promote competition in all local telecommunications markets in Louisiana, this Commission has initiated a number of rule-making proceedings. One such proceeding, Docket U-22252-C *In re: BellSouth Telecommunications, Inc. Service Quality Measurements*, established performance measurements to monitor the service BellSouth provides to its competitors. No less than four orders have been issued in that docket, all of which have fostered the Commission’s goals of promoting competition. Further, Docket U-24714, Subdocket A, *In re: Final*

⁴ The actual Regulations are contained in “Appendix B” to the General Order.

Deaveraging of BellSouth Telecommunications, Inc., UNE Rates, established new cost based rates for UNEs available to CLECs. Staff notes that following the issuance of the Order in that docket, many new competitors have entered the market. Additionally, in connection with Staff's review of BellSouth's 271 pre-application filing in Docket U-22252-E, several recommendations were made to further promote competition.

III. SUMMARY OF STAFF'S PROPOSED RECOMMENDATION

In Docket U-22252-E, Staff made the following recommendation:

That the Commission order BellSouth to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice service under the same terms and conditions that BellSouth offers the high frequency portion of its loops in line sharing arrangements. Staff further recommends that the CLEC shall be prevented from charging BellSouth for use of its UNE loop. Any issues regarding implementation of this recommendation shall be referred to the regional line sharing/line splitting collaborative for review and resolution. BellSouth may petition the Commission for a stay of this requirement upon presentation of evidence regarding substantial operational issues that must be resolved.

When the matter was considered at the Commission's September 2001 Business and Executive Session, the Commission voted to accept Staff's Recommendation, with Staff directed to determine whether ADSL service could be added to UNE lines in the future.⁵

Order U-22252, E memorialized the Commission's vote, instructing Staff to,

further study the issue of requiring BellSouth to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice service until such time as the operational and policy issues associated therewith are fully explored.⁶

Based on the above, a presumption existed that Staff's Recommendation in Docket U-22252, E should be adopted, absent any "operational or policy issues" prohibiting its implementation. Comments received from the parties suggested additional concerns must also be addressed, as evidenced by comments received relative to possible jurisdictional and technical issues. Neither the vote of the Commission, nor the directive of the order, suggested any such issues were a concern prior to this docket being opened. Nonetheless, to insure all issues are thoroughly explored, Staff's Proposed

⁵ See Official Transcripts of the September 21, 2001 Business and Executive Session.

⁶ Order U-22252, E.

Recommendation addressed not only "operational and policy" issues, but jurisdictional and technical issues as well. Based on the following conclusions, it was Staff's opinion that the recommendation set forth in docket U-22252-E be reaffirmed and adopted.

A. Policy Issues

Before addressing any "policy" arguments made by the parties, Staff reminded that parties that this Commission's policy, as stated in the Local Competition rules, is to promote competition in all telecommunications markets. Adopting Staff's Recommendation in U-22252, subdocket E will promote that goal, by allowing more end-users to choose an alternative voice provider without fear of losing their DSL service. BellSouth's policy of refusing to provide its DSL service over CLEC voice loops is clearly at odds with the Commission's policy to encourage competition. Likewise, BellSouth's contention that such a regulation would diminish competition in the DSL market is not consistent with the comments received.

Pursuant to its current DSL policy, BellSouth "simply chooses not to sell DSL service that work on CLEC loops."⁷ As summarized in KMC's comments, BellSouth's policy actually deters customers from switching to other providers, thus hindering competition not only in the voice market, but the DSL market as well. Various other examples of the anti-competitive effects of this policy were contained in the CLEC's comments⁸, including (1) disconnection of BellSouth DSL service when an end-user changes voice providers, (2) placing codes on Customer Service Records ("CSRs") that must be removed before transferring service, (3) placing DSL service on primary lines in multi-line situations without explaining the consequences to the end-user and (4) transferring back voice service if BellSouth's DSL is subsequently placed on the primary line. Interestingly enough, the only of the above examples BellSouth addressed in its reply comments is the primary line issue, referring Staff to the FCC's 271 order. BellSouth's failure to even dismiss or deny the other examples caused Staff grave concern, as any of the above puts a voice CLEC in a clear competitive disadvantage by

⁷ See reply affidavit of Thomas G. Williams filed June 25, 2001 in Docket U-22252-E at page 11.

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creating more "hoops" a CLEC must jump through to provide voice service, as outlined in Staff's summary of the individual comments.

Rather than discuss the above concerns, BellSouth argued the Commission should make inquiries relative to the investments, personnel and taxes CLECs have made in Louisiana before it makes a decision. Staff was at a loss as to how any of this information, if obtained, would be of any benefit to the Commission or Staff. In furtherance of this position, BellSouth filed a Motion for Leave to Propound Data Requests on June 28, 2002. Staff was concerned this filing could not only result in an unnecessary delay in the issuance of Staff's Recommendation, but also could broaden the scope of the docket beyond the Commission's directive.

In conclusion, the Commission's policy is to support competition in all telecommunications markets, including local voice service. The anti-competitive affects of BellSouth's policy are at odds with the Commission's, and thus should be prohibited.

B. Jurisdictional Issues

While "jurisdictional issues" were not contemplated in the Commission's directive, Staff believed it was important to address this Commission's jurisdiction and how it is consistent with that of the FCC. BellSouth's argued the LPSC has no jurisdiction to regulate the provisioning of its DSL service over CLEC voice loops. This argument is couched on the presumption that Staff's recommendation would essentially amount to LPSC regulation of DSL, which is a federally tariffed service. This argument fails to consider the basis of Staff's Recommendation in U-22252-E, i.e. the anticompetitive effect BellSouth's practice has on CLEC voice customers in violation of relevant LPSC, as well as FCC, rules and regulations, by restraining voice competition. Despite BellSouth's arguments to the contrary, Staff's Recommendation in docket U-22252-E is entirely consistent with the Telecommunications Act, the Line Sharing Order and Line Sharing Remand Order.

The prevailing theme of the Local Competition Regulations is the Commission's goal of promoting competition in the local telecommunications market. Conversely, any practice that has a detrimental effect on competition is inconsistent and should be rectified. Further, Section 701 of the Local Competition Regulations, which established

BellSouth's Consumer Price Protection Plan, provides in Section 701 G. 10, "Tying arrangements are prohibited."⁹ Staff concluded that not only is BellSouth's current practice regarding the provisioning of its DSL service anti-competitive, it is also a "tying arrangement." Simply put, BellSouth, as the dominant voice and DSL provider in Louisiana, is tying the provision of its DSL service to its voice service. Only end-users who receive voice service from BellSouth, or end-users of a CLEC reselling BellSouth's voice service, may receive BellSouth DSL.

Claims that various RBOCs are behaving in an anti-competitive matter concerning the provision of their DSL services to voice service are not new. In support of their policy, RBOCs have continuously argued the provision of DSL is federally regulated and as such cannot be addressed by state commissions. WorldCom's first raised this issue in Louisiana in its reply comments filed in Docket U-22252-E.¹⁰ To Staff's knowledge, the RBOC argument has never been successful, as each state commission addressing DSL related issues has done so based on its authority to promote voice competition and address anti-competitive behavior.¹¹

In addition to orders cited by the CLECs, the Michigan Public Service Commission, in an order issued in Case No. U-13193 on June 6, 2002 ("Michigan Order"), determined that Ameritech's practices concerning the provisioning of its DSL services were anti-competitive and therefore violated state law.¹² As was the case in the Florida Order, the Michigan Commission addressed issues identical to those being considered in this docket. Staff's Recommendation in U-22252-E, and its recommendation herein, are consistent with both orders.

BellSouth's was correct in saying the FCC's Line Sharing Order did not create an obligation that ILECs continue to provide DSL service when they are no longer the voice provider.¹³ However, neither the Line Sharing Order, nor the Line Sharing Remand Order prohibited states from regulating anti-competitive behavior or illegal tying arrangements. In fact, the FCC specifically stated in the Line Sharing Remand Order,

⁹ A similar provision applying to all certificated TSPs is contained in Section 301 J. 2 of the Local Competition Regulations.

¹⁰ Staff's recommendation in U-22252-E was based on its consideration of those initial comments, as well as BellSouth's subsequent reply.

¹¹ See California Order at pages 6-11, Florida Order at pages 7-9.

¹² See Michigan Order at page 15.

¹³ As a reminder, the DC Circuit has vacated the Line Sharing Order.

To the extent that AT&T believes that specific incumbent behavior constrains competition in a manner inconsistent with the Commission's line sharing rules and/or the Act itself, we encourage AT&T to pursue enforcement action.

Clearly the above pronouncement grants this Commission authority to rule on the issue before it without infringing on the FCC's jurisdiction, as the LPSC is acting in furtherance of its goal (and the FCC's) to promote competition, not attempting to regulate DSL service.

Staff concluded that any perceived conflicts between FCC and LPSC jurisdiction raised by BellSouth should be of no concern to this Commission, as it clearly has the authority to determine BellSouth's practices are contrary to LPSC rules and regulations, without fear of infringing on the FCC's jurisdiction or non-regulated areas.

C. Technical Issues

Staff's discussion of technical issues will be brief. Simply put, there is no technical reason set forth by BellSouth or the CLECs as to why BellSouth's DSL service cannot be provisioned over CLEC voice loops. As mentioned throughout this recommendation, BellSouth's current practice is based on an internal policy decision.

D. Operational Issues

As set forth in Staff's Recommendation in docket U-22252-E, BellSouth's obligation to provide its DSL service over CLEC voice loops could be stayed if BellSouth provided evidence of "substantial operational issues" that must be resolved. Essentially this docket gives the parties the opportunity to review any such operational issues prior to any Commission Order being issued.

As summarized herein, all operational issues addressed by BellSouth in its comments involve additional costs it believes it would incur if it loses control of the local loop, but is still required to provide its DSL service. In response to these operational issues, Staff first notes that in U-22252-E, Staff recommended that CLECs not be allowed to charge BellSouth for use of its UNE loops. Despite the fact that SECCA has suggested otherwise, Staff had no intention of modifying that portion of the recommendation. Therefore, any concerns relative to costs assessed to BellSouth for using the CLEC loop are moot.

Interestingly enough, the remainder of operational issues raised by BellSouth are arguably the same operational issues that exist for competitive DSL providers that do not control the voice portion of the loop. Any DLEC or CLEC providing DSL services only (i.e., one that is not also the voice provider) is in the same position. However, BellSouth argued such an arrangement causes operational issues that would drive up the costs of its DSL. As an alternative, BellSouth proposed CLECs convert UNE loops of BellSouth DSL customers to resale, thereby allowing BellSouth to continue controlling the loop. As evidenced by the comments, not only was such a suggestion infeasible to some CLECs, it would only increase the costs and operational issues associated with providing voice service. Staff was not convinced that any of the operational issues provided by BellSouth were substantial enough to warrant it being absolved of providing its DSL service to CLEC voice customers. If anything, they suggested to Staff that BellSouth is leveraging position as the dominant voice provider with control of the network, to give itself another advantage over CLEC DSL providers.

Accordingly, Staff reemphasized its U-22252-E recommendation to make it clear that BellSouth should not only be required to provision its DSL service to end-users over CLEC voice loops, but must do so utilizing the same non-discriminatory rates, terms and conditions it provides such services to its voice customers, as BellSouth's comments suggest it may simply raise the price of DSL to CLEC voice customers in such a fashion that Staff's Recommendation is rendered moot.

IV. SUMMARY OF BELL SOUTH'S EXCEPTIONS TO STAFF'S PROPOSED RECOMMENDATION

BellSouth's exceptions to Staff's Proposed Recommendation were filed on August 12, 2002, along with three affidavits. As set forth in the filing, BellSouth took exception with Staff's Recommendation in six specific areas, arguing: 1. The Commission's Rules of Practice and Procedure do not authorize Staff to proceed in the manner it did in this docket; 2. The Commission does not have jurisdiction to alter or otherwise regulate BellSouth's Interstate Services; 3. Staff's Presumption that the Commission has prejudged this matter is wholly inappropriate; 4. CLEC Profit Margin, not customer choice is the core issue; 5. Operational issues exist and 6. KMC's

Complaints referred to by Staff are unfounded. Rather than provide an exhaustive summary of these comments, Staff responded to the exceptions in its Final Recommendation.

V. CLEC REPLY COMMENTS

As mentioned infra, reply comments to BellSouth's Exceptions were received from WorldCom, SECCA, KMC, Access, DeltaCom, Xspedius and NewSouth. These reply comments addressed BellSouth's exceptions, provided support for the adoption of Staff's Proposed Recommendation, and included affidavits and other exhibits as attachments. No exceptions to Staff's Proposed Recommendation were received from the CLECs. Similarly as with BellSouth's comments, rather than providing an exhaustive summary of the reply comments, Staff addressed the comments in its Final Recommendation.

VI. INFORMAL TECHNICAL CONFERENCE

Following receipt of BellSouth's exceptions and the replies thereto, Staff presided over an informal technical conference. Representatives of BellSouth, several CLECs, as well as Commissioners Blossman and Sittig and Commission Staff, were present at the technical conference. The parties were given an opportunity to respond to the latest filings, ask and field questions and provide further support for their respective positions. Particularly, BellSouth witness Ruscilli went into detail explaining why he concluded in his affidavit that resale is a valid option for the CLECs and BellSouth witness Milner explained his affidavit relative to Operational Issues. Following BellSouth's presentations, CLEC witnesses were given the opportunity to respond and/or ask questions of the witnesses. Questions were also posed by the Commissioners and Staff. Specifically questions were asked as to who would invest in order to ensure the entire state has DSL available. No affirmative response to deploy was received from the CLECs. In addition to the exceptions and replies, Staff considered this information in support of its recommendation.

VII. STAFF'S FINAL RECOMMENDATION

As stated herein, Staff's role in this docket was to determine whether any policy or operational issues existed that would prohibit BellSouth from providing its ADSL service over CLEC loops. That is precisely what Staff considered in detail in its Proposed Recommendation, with Staff ultimately concluding that no such operational or policy issues existed. As no exceptions were provided by the CLECs, Staff's Final Recommendation focused on BellSouth's Exceptions and any impact they had on Staff's Proposed Recommendation.

A. Staff's Reply to Exceptions 1 and 3.

Interestingly, BellSouth began its exceptions not by questioning Staff's Proposed Recommendation, but by questioning the rulemaking procedure employed. BellSouth concluded the procedure violated not only the Commission's Rules of Practice and Procedure, but also Article IV § 21 of the Louisiana Constitution. BellSouth suggested as a remedy the Commission opening up a docket to establish concrete rules for such proceedings. A simple review of recent Commission history would question the correctness of this assumption. Staff, through the undersigned counsel, has been either counsel of record or co-counsel of record in numerous Commission rulemaking proceedings (and all of which included BellSouth as a party) in which essentially the same procedural rules were followed, without objection from BellSouth or others.¹⁴

Further troubling was BellSouth's statement that it was under the impression "Staff would consider the issues presented in this docket in a full and comprehensive manner as the 271 Order requires."¹⁵ Staff assumed BellSouth's was suggesting Staff's consideration of rounds of comments and exhibits received by the parties, numerous informal meetings addressing the issues, review of relevant FCC, LPSC and other PSC decisions, the result of which was a 24 page recommendation, was insufficient. The presumption referred to by Staff, to which BellSouth takes exception, did not in any way diminish the amount of consideration, time and effort that went into Staff's

¹⁴ U-23445, U-23446, U-24050, U-25754, R-26171 and R-26438 were all Rulemaking dockets involving Telecommunications issues. In most instances, fewer comments were received than allowed in this proceeding. Further, BellSouth did not question the procedure followed herein until after Staff's Recommendation, which took a contrary position, was issued.

¹⁵ BellSouth's Exceptions to Staff's Proposed Recommendation at page 5.

Recommendation. It was only after consideration of all information contained in this record that Staff issued its Proposed Recommendation. Nonetheless, any attempts to suggest the Procedure followed herein by Staff were inconsistent with the Commission's Rules and Regulations should be simply dismissed as an effort to create additional issues the Commission must consider.

B. Staff's Reply to Exception 2.

BellSouth also raised many of the same jurisdictional issues contained in its original comments in its exceptions. BellSouth suggested the effect of Staff's recommendation would be the imposition of disincentive to the deployment of DSL service, rather than the goal of promoting the accessibility of new and innovative services. Such a statement creates a slippery slope for Staff (and BellSouth) to tread upon. How can the Commission promote the deployment of a service over which BellSouth argues it has no jurisdiction over? Should Staff assume it is ok for the Commission to establish rules relative to interstate services, provided they only benefit the provider of such services?

By no means was Staff suggesting this recommendation would amount to a regulation of DSL services, however, it is interesting that BellSouth would have the Commission believe the Recommendation would hinder the further deployment of such services. According to BellSouth's experts, approximately 70-75% of BellSouth customers in Louisiana have access to its DSL, while only 5% or so subscribe to it. Staff argued if any disincentive exists prohibiting BellSouth from further deploying its services, it was the demand for the product, not any order of this Commission. Staff's Recommendation, if adopted, would only require BellSouth to continue providing its DSL service to customers currently receiving the service when they switch voice providers, and to voice customers of CLECs opting to receive the service, essentially meaning BellSouth will derive more revenue for its non-regulated service, in addition to furthering competition in the voice market.

BellSouth also objected to Staff's classification that BellSouth is "tying" its DSL service to its voice service, suggesting Staff has transformed this proceeding into an enforcement action. BellSouth's suggestion disregards the fact that Staff had

recommended no penalties, fines or other administrative remedies be levied against BellSouth, only that it (BellSouth) rectify any potential anti-competitive behavior. Staff agreed with SECCA that this Commission has the jurisdiction to rectify any potentially anti-competitive behavior without the necessity of instituting an enforcement action.

C. Staff's Reply to Exception 4.

In this exception, BellSouth provided arguments and testimony in support of its position that resale is a valid option for the CLECs, further arguing CLECs simply choose not to use it for cost reasons. While Staff appreciated BellSouth's comments relative to CLEC profit margins and the work done by Mr. Ruscilli relative to the costs associated with UNE-P versus resale, it respectfully disagreed with the conclusion. UNE-P has been recognized by this Commission as a valid form of competition, most recently in BellSouth's 271 application. As long as it is treated as such, CLECs should have the choice to determine how they choose to compete, rather than the choice being made by their competition. Not only does BellSouth's "Resale Option" restrict the mode of entry a CLEC can use, it also restricts the service offering that can be made to those services contained in BellSouth's tariffs. For example, a CLEC such as WorldCom could not offer its "Neighborhood" plan via resale because BellSouth provides no similarly bundled service it can resell.

D. Staff's Reply to Exception 5.

Despite what is suggested by the CLECs in their reply comments, Staff never determined there were no operational issues that may be incurred by BellSouth. Staff simply concluded that none of the issues were substantial enough to warrant BellSouth being absolved from following Staff's Proposed Recommendation. BellSouth's exceptions and affidavits shed further light on the potential operational issues it believes it will encounter if forced to implement Staff's Recommendation. While BellSouth qualified these operational issues as being burdensome, Staff believed the actual effect of the operational changes must specifically be determined before they absolve BellSouth from implementing Staff's Recommendation. For example, at least two of the operational issues raised by Mr. Milner in his affidavit were rendered moot by Staff's

Proposed Recommendation wherein Staff concluded that CLECs should be prevented from charging BellSouth for use of the high frequency portion of the loop. While there is some overlap, the majority of the remaining operational issues would only apply when BellSouth is required to provide its DSL over CLEC voice loops, not UNE-P. Nonetheless, based on the above, Staff was willing to clarify its recommendation to the extent that the operational issues related specifically to UNE loops (facilities based providers) are later determined to be overly burdensome. If such a determination were made, Staff would recommend that BellSouth be required to provide its DSL service only to CLEC customers via UNE-P, provided that BellSouth shall not prematurely disconnect voice and data service to a customer converting service from BellSouth to a facility based CLEC. Should a premature disconnection occur, BellSouth shall be fined up to \$10,000.00 per occurrence, as well as provide a full refund to the customer for the previous month's voice and data service. Additionally, Staff noted that due to the regional nature of BellSouth's Operational Support Systems, any final decision of a Commission in the BellSouth region on this issue would require BellSouth to make the necessary operational changes, thereby re-instituting Staff's original recommendation.

E. Staff's Reply to Exception 6.

Finally, BellSouth suggests that Staff wrongfully relied on KMC's allegations, suggesting KMC has a history of make allegations without any factual support. Such a suggestion is obviously refuted by the information provided to Staff counsel by KMC in Docket U-22252-E and the series of Collaborative workshops, which were referenced in support of the finding. Copies of those filings are contained herein.

VIII COMMISSION CONSIDERATION AND ISSUANCE OF ORDER R-26173

For the reasons stated above, Staff recommended that its recommendation, as contained in docket U-22252-E, and as modified in this docket, be adopted. The matter was considered at the Commission's December 18, 2002 Business and Executive Session. Following oral argument, Commissioner Field moved to accept Staff's Final Recommendation, adding the following provision: "The Louisiana Public Service Commission affirms that it does not regulate the rates or pricing of BellSouth's wholesale

or retail DSL service." Following a second by Commissioner Sittig, Commissioner Blossman read a letter from Congressman Billy Tauzin into the record. Roll was taken, with Commissioners Field, Sittig and Dixon voting yes, Commissioner Blossman voting no and Commissioner Owen absent. Order R-26173, memorializing the Commission's vote was issued January 24, 2003, containing the following ordering language:

1. Staff's Final Recommendation, for the reasons set forth herein, is adopted.
2. The Commission affirms that it does not regulate the rates or pricing of BellSouth's wholesale or retail DSL service.
3. This Order shall be effective immediately.

IX CONSIDERATION OF BELL SOUTH'S MOTION FOR RECONSIDERATION

On February 3, 2003, following issuance of Order R-26173, BellSouth timely filed a Motion for Reconsideration, or in the Alternative for Clarification and/or Modification and Stay ("Motion"). MCI WorldCom, Access Integrated, Xspedius, ITC^DeltaCom and NewSouth filed oppositions to the Motion. BellSouth's Motion was considered at the Commission's March 19, 2003 Business and Executive Session. Commissioner Field moved to deny BellSouth's Motion for Reconsideration, Modification and Stay. Additionally, the Commissioner made the following motion in respect to the request for clarification: (1) BellSouth is to continue to provide its wholesale and retail DSL service to customers who choose to switch voice services to a competitive local exchange carrier utilizing the Unbundled Network Element Platform. As stated in Order R-26173, this requirement likewise applies to CLEC voice customers who subsequently choose to receive BellSouth's wholesale or retail DSL service. Should BellSouth intend to offer its DSL service in the latter scenario over a separate line/loop, it shall file a proposal for consideration by the Commission no later than May 1, 2003. Such alternative offering, if proposed, shall not discriminate against that class of voice customers. The filing of such proposal shall not delay implementation of the Order or suspend BellSouth's current obligation to provide DSL service over the UNE-P. (2) The Commission affirms that it does not regulate the rates or pricing of BellSouth's wholesale or retail DSL service and does not establish any pricing for BellSouth's DSL in Order R-26173. BellSouth continues to have the flexibility under this Order to establish the price for its DSL services and offer discounts off of the established DSL price to its customers who choose packaged service offerings. (Example: BellSouth Complete Choice and

FastAccess Service). Once BellSouth establishes its price for DSL service, however, BellSouth shall not impose any additional charges for its wholesale or retail DSL service on consumers based on their choice of local voice service provider. Nothing herein shall prevent the Commission from investigating claims of anti-competitive or discriminatory pricing or practices, or violations of the Commission's Regulations for Competition in the Local Telecommunications Market. (3) The Order currently requires BellSouth to provide DSL over both the UNE-P and UNE loops. However, in light of the testimony of the facilities-based CLECs in this proceeding that they do not intend to have BellSouth provide DSL over their UNE loops, but intend to offer the consumers both voice and data services, the Commission is willing to clarify its Order. Accordingly, BellSouth is ordered to provide for a seamless transition without disconnection of consumers' voice and DSL service to the CLECs' voice and data services. BellSouth shall not require the disconnection of its wholesale or retail DSL service prior to the consumers' transition of voice and data service to that of the CLECs. BellSouth shall provide and the CLECs may provide the Commission a proposed performance measure that ensures a seamless transition of voice and data service occurs when an end-user changes voice and data service from BellSouth to a facilities-based CLEC that chooses to provide its own voice and data services to an end-user over a UNE loop no later than May 1, 2003. That measure will be included in the docket U-22252-C 6 month performance review. The filing of such proposal shall not delay implementation of the Order or suspend BellSouth's current obligation to provide DSL service over the UNE-P or to provide for the seamless transition, without disconnection, of a consumer's voice and DSL service to the CLE 's voice and data services. (4) Finally, Order R-26173 became effective on January 24, 2003. However, the Commission clarifies that BellSouth shall have until June 1, 2003, to fully implement the requirements of the Order. The motion was seconded by Commissioner Dixon, and unanimously adopted.

IT IS THEREFORE ORDERED THAT:

1. BellSouth is to continue to provide its wholesale and retail DSL service to customers who choose to switch voice services to a competitive local exchange carrier utilizing the Unbundled Network Element Platform. As stated in Order R-26173, this requirement likewise applies to CLEC voice customers who subsequently choose to receive BellSouth's wholesale or retail DSL service. Should BellSouth intend to offer its DSL service in the latter

scenario over a separate line/loop, it shall file a proposal for consideration by the Commission no later than May 1, 2003. Such alternative offering, if proposed, shall not discriminate against that class of voice customers. The filing of such proposal shall not delay implementation of the Order or suspend BellSouth's current obligation to provide DSL service over the UNE-P.

2. The Commission affirms that it does not regulate the rates or pricing of BellSouth's wholesale or retail DSL service and does not establish any pricing for BellSouth's DSL in Order R-26173. BellSouth continues to have the flexibility under this Order to establish the price for its DSL services and offer discounts off of the established DSL price to its customers who choose packaged service offerings. (Example: BellSouth Complete Choice and FastAccess Service). Once BellSouth establishes its price for DSL service, however, BellSouth shall not impose any additional charges for its wholesale or retail DSL service on consumers based on their choice of local voice service provider. Nothing herein shall prevent the Commission from investigating claims of anti-competitive or discriminatory pricing or practices, or violations of the Commission's Regulations for Competition in the Local Telecommunications Market.
3. The Order currently requires BellSouth to provide DSL over both the UNE-P and UNE loops. However, in light of the testimony of the facilities-based CLECs in this proceeding that they do not intend to have BellSouth provide DSL over their UNE loops, but intend to offer the consumers both voice and data services, the Commission is willing to clarify its Order. Accordingly, BellSouth is ordered to provide for a seamless transition without disconnection of consumers' voice and DSL service to the CLECs' voice and data services. BellSouth shall not require the disconnection of its wholesale or retail DSL service prior to the consumers' transition of voice and data service to that of the CLECs. BellSouth shall provide and the CLECs may provide the Commission a proposed performance measure that ensures a seamless transition of voice and data service occurs when an end-user changes voice and data service from BellSouth to a facilities-based CLEC that chooses to provide its own voice and data services to an end-user over a UNE loop no later than May 1, 2003. That measure will be included in the docket U-22252-C 6 month performance review. The filing of such proposal shall not delay implementation of the Order or suspend BellSouth's current obligation to provide DSL service over the UNE-P or to provide for the seamless transition, without disconnection, of a consumer's voice and DSL service to the CLE 's voice and data services.
4. Order R-26173 became effective on January 24, 2003. However, the Commission clarifies that BellSouth shall have until June 1, 2003, to fully implement the requirements of the Order.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA

April 4, 2003


DISTRICT I

CHAIRMAN JACK "JAY" A. BLOSSMAN


DISTRICT III

COMMISSIONER IRMA MUSE DIXON


DISTRICT IV

COMMISSIONER C. DALE SITTIG

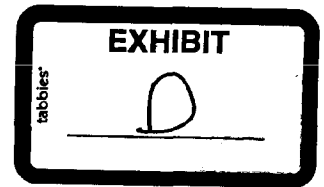

LAWRENCE C. ST. BLANC
SECRETARY
DISTRICT II

COMMISSIONER JAMES M. FIELD


DISTRICT V

COMMISSIONER FOSTER L. CAMPBELL

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION



LOUISIANA PUBLIC SERVICE COMMISSION
EX PARTE

DOCKET NUMBER U-22252 (E)

In re: Consideration and review of BellSouth Telecommunications, Inc.'s preapplication compliance with Section 271 of the Telecommunications Act of 1996 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc.'s application to provide interLATA services originating in-region.

STAFF'S FINAL RECOMMENDATION

The Staff of the Louisiana Public Service Commission ("Commission") submits this Final Recommendation supporting BellSouth Telecommunications, Inc.'s ("BellSouth") entry into the interLATA service market in Louisiana.

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L.A. PUBLIC SERVICE
COMMISSION

I. HISTORY OF SECTION 271 PROCEEDINGS IN LOUISIANA:

A. Initial Proceeding by the Louisiana Commission:

On September 5, 1997, this Commission did the following: (1) voted to approve BellSouth's SGAT, subject to modifications; (2) concluded that BellSouth's SGAT met each of the 14 items of the competitive checklist; and (3) determined that BellSouth's entry into the interLATA long distance market would further the public interest. See LPSC Order No. U-22252-A, dated September 5, 1997. Thereafter, BellSouth filed with the FCC its first application under Section 271 for authorization to provide interLATA service in Louisiana. The FCC denied that application on February 4, 1998, finding that BellSouth failed to make available Contract Services Arrangements ("CSAs") for resale at a wholesale discount, and also that it failed to prove it provides nondiscriminatory access to its Operational Support Systems ("OSS"). *In the Matter of Application by BellSouth Corporation, et al. Pursuant to Section 271 of the*

Communications Act of 1934, as amended, To Provide In-region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 6245 (1998) ("*First Louisiana Order*").

Thereafter, this Commission conducted further proceedings under the 1996 Act. The Commission approved modifications to BellSouth's SGAT, including incorporation of the wholesale discount for CSAs established in Docket No. U-22252-D, and adoption on an interim basis of the Service Quality Performance Measurements established by the Georgia Public Service Commission. See LPSC Order No. U-22252-B, July 1, 1998.

On June 18, 1998, by a vote of four to one, this Commission voted to approve and support BellSouth's second application for interLATA authority in Louisiana. On October 13, 1998, the FCC denied BellSouth's second application. In its Order, however, the FCC noted that BellSouth's "application...demonstrates that significant progress has been made toward reaching the goals of the Act," and that BellSouth should be "commended ...for making significant improvements over the past 8 months since we issued the *First Louisiana Order*." *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, Rel. October 13, 1998, ¶5 ("*Second Louisiana Order*"). Specifically, the FCC found that BellSouth had met six (6) checklist items and one subsection of a seventh item, but failed to provide adequate evidence of compliance with the remaining items. To assist BellSouth in future applications, the FCC set forth in detail the deficiencies in BellSouth's application and the actions BellSouth needed to take to address those deficiencies. In particular, the FCC highlighted BellSouth's failure to provide sufficient evidence, through performance data

or otherwise, that it is providing CLECs non-discriminatory access to various services, including OSS.

B. Commission Action Since Second Louisiana Order:

Since the denial of BellSouth's second application, this Commission has been involved in numerous dockets to further open the local telecommunications market, including generic dockets dealing with local competition issues and arbitration proceedings dealing with interconnection agreement disputes between CLECs and BellSouth. See Exhibit A to BellSouth's Original Comments. Of particular significance are this Commission's continuing work in its Docket No. U-22252-C dealing with CLEC performance measurements and the adoption of a self-executing enforcement plan, as discussed below. This Commission has also conducted a series of informal collaborative workshops in which numerous operational issues confronting BellSouth and CLECs doing business in Louisiana's local market were addressed and resolved.

1. *The SQM Docket No. U-22252-C*

At the June 17, 1998 Business and Executive Session, the Commission adopted on an interim basis the Service Quality Measurements Performance Reports ("SQM") filed by BellSouth ("BST") and ordered that a rulemaking proceeding be commenced and completed to determine final SQM for presentation at the August 19, 1998 Business and Executive Session.¹ Thereafter, Acadian Consulting Group was retained by the Commission to assist the rulemaking proceeding and to issue a recommendation on behalf of Staff concerning BellSouth's SQM. Acadian Consulting Group reviewed and analyzed the comments, testimony, reply comments,

¹ In its October 19, 1998 Order denying BellSouth's second 271 application for Louisiana, the FCC commended this Commission for its work in this area, but noted certain inadequacies in the interim performance measurements.

and supplemental comments of e.spire, BellSouth, MCI WorldCom, Cox, Intermedia Communications, AT&T, and Sprint filed with the Commission on July 10, 1999 and July 23, 1998 and July 28, 1998. Acadian Consulting Group assisted Staff with a one-day technical conference held on July 23, 1998. After the technical conference, Acadian Consulting Group prepared Staff's initial recommendation filed on August 5, 1998 and comments on this initial recommendation were filed on August 10, 1998. Staff's final recommendation was filed with the Commission on August 12, 1998.

At the August 19, 1998 Business and Executive Session, the Commission voted to adopt the Staff's recommendation. In its August 31, 1998 General Order in Docket No. U-22252-C, in which it adopted CLEC service quality performance measurements, the LPSC ordered further workshops and technical conferences in which BellSouth, the CLEC community, and the Staff could work in a collaborative environment to resolve outstanding issues. The Commission ordered further workshops to address (1) clarification and refinement of the service quality performance measurements adopted by the LPSC in its August 28, 1998 General Order; (2) a statistical methodology to measure performance to CLECs against BellSouth's performance to its own retail end users; (3) the need for retail analogs and benchmarks to establish objective standards for performance; and (4) the need for a self-executing enforcement mechanism (SEEM) to provide meaningful incentives to BellSouth to provide appropriate performance, and to ensure swift repercussions in the event it failed to do so. See LPSC General Order, Docket No. U- 22252-C, dated August 31, 1998.²

As stated more fully in the text herein, this Commission has done considerable work in this area, and believes that the current measurements are more than adequate to allow appropriate evaluation of BellSouth's performance.

² The following parties intervened and participated in these workshops: e.Spire, Sprint, MCI/WorldCom, AT&T, Cox, Intermedia, EATEL, and Actel,. Xspedius, NewSouth and KMC did not participate in Docket U-22252-C.

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From the fall of 1998 through the summer of 2000, the Commission's consultant, Acadian Consulting Group, and Staff conducted 9 workshops consisting of 26 days of technical discussions by BellSouth, the CLECs and Staff on these issues. Additionally, parties to the proceeding filed numerous rounds of comments, exhibits, and reply comments on issues addressed at the workshops.

In June 2000, the Staff issued an Interim Staff Recommendation on 69 disputed issues. On August 10, 2000, the FCC issued its Order on Reconsideration, FCC Docket No. 98-147, and adopted national default intervals for collocation provisioning that were to take effect within 60 days, in the absence of a state order adopting generally applicable state-specific standards. *See* FCC Order on Reconsideration, FCC Dkt. No. 98-147, released August 10, 2000 ("*Order on Reconsideration*").³ On October 9, 2000, the Commission issued Order No. 22252-C in which it adopted the Staff's recommendations with respect to collocation issues, including the endorsement of Louisiana-specific intervals and benchmarks for physical collocation.

Parties to the workshops made significant progress towards developing permanent performance measurements; an appropriate statistical methodology to employ; appropriate retail analogues and benchmarks; and a penalty plan. *See* Staff's Final Recommendation, Docket No. U-22252-C, approved by the LPSC on February 21, 2001. The Commission voted in February of this year to adopt Staff's Final Recommendation on the remaining 67 issues in dispute. *See* Staff's Final Recommendation, Docket No. U-22252-C. The Commission's resulting Order

³ The Order on Reconsideration requires that, except to the extent a state sets its own standard, an incumbent LEC must provision physical collocation arrangements, including caged and cageless collocations, no later than 90 days after receiving a collocation application. This Commission took action in this order to set Louisiana-specific intervals for collocation based on the extensive evidence and work conducted in Docket No. U-22252-C. The Commission's Order also instructed the Staff to commence work on CLEC collocation forecasting procedures and to consider whether there should be a separate interval for cageless collocation. The Commission is still considering these issues, and Staff makes a recommendation herein to resolve those issues.

dated May 14, 2001 covered a wide range of topics, including addition of new measures, such as "hot cut" measures, additional product disaggregation to include new xDSL product services, aggressive retail analogs and benchmarks for BellSouth's pre-ordering, ordering, provisioning, maintenance and billing services to CLECs, and a comprehensive self-executing enforcement plan designed to impose significant penalties on BellSouth in the event it fails to deliver nondiscriminatory service to CLECs.

2. CLEC Collaborative

At the Commission's October Business and Executive Session, Louisiana Public Service Commissioner Irma Muse Dixon directed the Staff to arrange a series of collaborative meetings to discuss issues involving Local Exchange Carriers (CLECs) in Louisiana. The purposes of the Collaboratives were two fold. First they were to assist the Commission, its Staff and interested parties in gathering information about the current process, procedures and services being used by CLECs and ILECs operating in Louisiana. Second, they were to be instrumental in developing and implementing solutions to the problems that are experienced by the parties. While the Commission Staff had some idea on certain issues for discussion, they asked for suggestions from both CLECs and Incumbent Local Exchange Carriers (ILECs) to identify additional topics that needed to be addressed. This initiative was published in the Commission's Official Bulletin dated October 13, 2000 and a notice was mailed to all CLECs on October 30, 2000. Comments were received from the following carriers: KMC Telecom, ITC DeltaCom Communications, Inc., Birch Telecom of the South, Inc., ConnectSouth Communications of Louisiana, Inc., COVAD Communications, e-Spire Communications, New South Communications Corp., MCI WorldCom Communications, Inc., USLEC Corporation, AT&T Communications of the South Central States, Cox Louisiana Telecom, L.L.C., BellSouth Telecommunications, Inc., Network

Telephone Corporation, New Edge Network, Inc., US Unwired/Xspedius Corporation and Z-Tel Communications, Inc.

A Pre-Collaborative meeting was held on December 12, 2000 wherein a procedural schedule was adopted. Participating in the Pre-Collaborative meeting were twenty-four (24) individuals representing fourteen (14) carriers. A consensus was reached on the format of the meetings and an outline of the proposed agenda items for each of the scheduled meeting dates during the months of January and February 2001.

The workshops provided an opportunity for dialogue between the CLECs and ILECs in an informal setting to discuss numerous operational issues. The issues covered at these workshops included the following: customer conversions, trunking issues, provisioning, maintenance and repair, collocation, order processing, BellSouth's Operational Support Systems, information available on BellSouth's websites, CLEC training, and access to poles, ducts and conduit. As part of this collaborative effort, BellSouth provided central office tours of its New Orleans Main Central Office that was well attended by both CLECs and the Commission. Included within this tour were examples of both virtual and physical collocations, as well as caged and cageless collocations.

The Commission Staff conducted a total of nine (9) days of collaborative workshops in an effort to further promote competition in the local telecommunications market in Louisiana. The workshops were informal in nature and allowed for open dialogue for the CLECs with numerous BellSouth Subject Matter Experts (SMEs) as well as a dialogue between and among other CLECs. Items that involved pending legal matters (i.e., arbitration issues and docketed matters) were not discussed in these forums. In each workshop, a list of Action Items was developed relative to those issues that could not be resolved during the workshop session. The

Commission held its final CLEC Workshop on May 16, 2001, which was designed to finalize pending Action Items. These Action Items were continuously monitored and updated at each workshop until they were mutually considered "resolved or closed." The Staff reminded the parties that any party may bring up any unresolved issues through the Commission's formal complaint proceeding process. To date, no such complaints have been docketed.

Numerous issues discussed at these workshops resulted in process improvements designed to further enhance existing processes. Issues involving service advocacy to the CLECs by BellSouth resulted in the creation of a Louisiana-based Service Advocacy Center designed to help complete UNE tasks for CLECs within BellSouth's Network organization. In addition, as a result of the Commission's idea for a series of informal collaborative workshop efforts to improve communications, BellSouth created a regional CLEC User Group initiative designed after the Louisiana initiative. The initial CLEC User Group meeting was held on March 22, 2001 and covered the UNE-P User Group that attracted twenty-two (22) different CLEC companies represented with thirty-two (32) participants. A second User Group Forum was held on March 29, 2001 on the topic of collocation. The CLECs have chosen to meet every two (2) months in order to continue the dialogue began with the Louisiana workshops. Future plans for additional User Groups include such topics as Resale and Facility-Based (including Data) CLECs and Training.

In addition to being a forum for two-way dialogue for issue identification and resolution, the benefits available to CLECs who attended these regional workshops included the following:

- Valuable forum on BellSouth's Network product plans.
- An inside track on UNE-P product development.
- Presentations/Discussions on topics that include emerging and future technologies.
- Continuing Education Opportunities.

The Collaborative Workshops were a huge success because they allowed the parties an opportunity to mutually identify and resolve issues in an informal forum, without the need for formal regulatory proceedings. Because BellSouth's Operational Support Systems and processes are regional in nature, all process improvements made as a result of the workshops have been a benefit to all CLECs operating within the BellSouth region. It is for this reason that BellSouth has developed the Regional CLEC User Group Forums which the Staff expects will continue to foster local competition and provide for improved and more efficient processes for all parties involved. (See Exhibit "A" for Final CLEC Collaborative Report with Exhibits).

3. *Docket No. U-24714*

This Commission first established rates for UNEs pursuant to the requirements of the 1996 Act and the FCC orders promulgated thereunder by Order U-22022/U-22093-A, dated October 24, 1997. Initially, such rates were statewide average rates, rather than geographic deaveraged rates, due to the FCC having stayed Rule 51.507(f) (the FCC's "Deaveraging Rule"). Subsequently, the FCC announced that the stay of Rule 51.507(f) would be lifted effective six months from the date of the release of its Order Regarding New Mechanism for Federal Universal Service High Cost Support Provided to Non-Rural Carriers (CC Docket No. 96-45). This Order was released November 2, 1999 ("FCC Deaveraging Order"), thus lifting the stay of the FCC's Deaveraging Rule effective May 1, 2000.

In response to the FCC Deaveraging Order, on February 4, 2000 this Commission instituted Docket U-24714, In re: Interim deaveraging of BellSouth Telecommunications, Inc., UNE Rates pursuant to FCC CC 96-45 9th Report and Order on 18th Order on Reconsideration rel. 11/2/00. In addition to Staff, the following parties intervened and participated in Docket U-

24714: BellSouth Telecommunications, Inc.; AT&T Communications of the South Central States, Inc.; Sprint Communications Company L.P.; Actel Integrated Communications Inc.; Cox Louisiana Telcom, L.L.C.; Advanced Tel, Inc.; The Small Company Committee; MCI WorldCom, Inc.; and KMC Telecom, Inc.

The parties to Docket U-24714 agreed that it would not be possible to conclude a proceeding to establish permanent cost-based deaveraged UNE rates in time to meet the May 1, 2000 deadline. Therefore, the parties entered a "Joint Stipulation Regarding UNE Deaveraging" dated March 20, 2000 that established interim deaveraged UNE rates and interim rates for certain UNE combinations for BellSouth in Louisiana. These interim rates were based on the statewide average rates established by the Commission in Order U-22022/U-22093-A, dated October 24, 1997. The Joint Stipulation provided that the interim rates would remain in effect through December 31, 2000 and was approved by the Commission in Order U-24714.

Subsequently, the Commission instituted Docket U-24714 (Subdocket A) by publication in the Official Bulletin dated March 31, 2000. The Commission republished Subdocket A on August 4, 2000 to include consideration of BellSouth's new cost studies to establish rates for UNEs and network element combinations, including those required by the FCC's Third Report and Order in CC Docket No. 96-98.⁴ On December 13, 2000, the Commission voted to extend the date for expiration of the interim rates established in the Joint Stipulation from December 31, 2000 to September 30, 2001, or until the interim rates were replaced by permanent deaveraged UNE rates adopted by the Commission in Docket U-24714 - A.

The Administrative Hearings Division of the Commission held hearings on April 23-27, 2001 in Docket U-24714-A on all issues concerning this Commission's establishment of cost

⁴ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, 15 FCC Rcd 3696 ("UNE Remand Order").

based deaveraged UNE rates to comply with the requirements of the 1996 Act, as well as the FCC orders promulgated thereunder. During this hearing, the Staff presented testimony recommending that the Commission adopt rates that are *substantially less* than the rates proposed by BellSouth in that proceeding. The Administrative Hearings Division's recommendation concerning such issues is expected to be released in time for the Commission's consideration during its September 19, 2001 Business and Executive Meeting.

4. Arbitrations

These proceedings include arbitrations with AT&T of the South Central States, Inc. (Docket No. U-25264), MCImetro Access Transmission Services (Docket No. U-25350), Intermedia/e.spire Communications (Docket No. U-24659/U-24709), ITC/DeltaCom (Docket No. U-24206) and Sprint Communications (Docket No. U-25373). Hearings have been conducted in these arbitration proceedings and the parties are awaiting rulings from the Administrative Law Judges. A number of the issues raised by CLECs in this proceeding are included in these arbitrations, including particularly the AT&T and MCI arbitrations, and are more appropriately handled by this Commission in those pending proceedings.

5. Subdocket-E:

This proceeding was instituted by BellSouth's April 20, 2001 filing of a Notice of Intent to File Section 271 Application with the FCC, Brief in Support of BellSouth's Pre-Application Compliance with Section 271, and Revised SGAT. In response, the Commission opened Docket U-22252 (Subdocket E), *In re: Consideration and review of BellSouth Telecommunications, Inc.'s preapplication compliance with Section 271 of the Telecommunications Act of 1996 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc.'s application to provide interLATA*

services originating in-region. The Commission published Docket U-22252-E in its April 27, 2001 Official Bulletin, inviting interested parties to intervene and establishing a schedule to receive comments from such parties. The following parties intervened in Docket U-22252-E: Cox Louisiana Telcom, LLC, Sprint Communications Company, COVAD Communications, MCI WorldCom, KMC Telecom, Inc., AT&T, SECCA, Xspedius Corporation, NewSouth Communications, and Access Integrated Networks.

By June 11, 2001, the following intervenors had submitted comments to BellSouth's April 20, 2001 filings: COVAD Communications, MCI WorldCom, KMC Telecom, Inc., AT&T, SECCA, Xspedius Corporation, NewSouth Communications, and Access Integrated Networks. BellSouth filed comments and affidavits in response to the intervenors' filings on June 25, 2001. In addition, Staff ordered BellSouth to file performance data for the month of May in the "FCC format" by July 11, 2001, and provided all parties until July 23, 2001 to comment on such data. AT&T and COVAD provided comments regarding BellSouth's May performance data.

Staff further ordered BellSouth to post its June performance data in the "FCC format" on or before August 11, 2001. Parties to the proceeding were then allowed an opportunity to provide any comments before August 21, 2001. Staff issued its Proposed Recommendation on August 6, 2001. Parties were given until August 20, 2001 to provide comments to Staff's Proposed Recommendation. The following parties provided comments: Sprint Communications, Company, L.P., AT&T Communications of the South Central States, Inc., KMC Telecom, Inc., Covad Communications Company, WorldCom, Inc., Access Integrated Networks, Inc., New South Communications Corp., Xspedius Corporation, and BellSouth Telecommunications, Inc.

II. FRAMEWORK FOR ANALYZING COMPLIANCE WITH CHECKLIST: LEGAL AND EVIDENTIARY STANDARDS

The FCC has clearly articulated the legal and evidentiary standards to be applied in analyzing compliance with the statutory requirements of section 271 and Staff applies those standards herein.

A. The Applicable Legal Standard:

In order to comply with the requirements of section 271's competitive checklist, a BOC must demonstrate that it has "fully implemented the competitive checklist in subsection (c)(2)(B)." In particular, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis. Previous FCC orders addressing section 271 applications have elaborated on this statutory standard. First, for those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in "substantially the same time and manner" as it provides to itself. Thus, where a retail analogue exists, a BOC must provide access that is equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness. For those functions that have no retail analogue, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier a "meaningful opportunity to compete." E.g., *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC

Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, Rel. June 30, 2000, ¶ 44 (*Texas Order*).

The FCC does not view the “meaningful opportunity to compete” standard to be a weaker test than the “substantially the same time and manner” standard. Where the BOC provides functions to its competitors that it also provides for itself in connection with its retail service, its actual performance can be measured to determine whether it is providing access to its competitors in “substantially the same time and manner” as it does to itself. Where the BOC, however, does not provide a retail service that is similar to its wholesale service, its actual performance with respect to competitors cannot be measured against how it performs for itself, because the BOC does not perform analogous activities for itself. In those situations, the examination of whether the quality of access provided to competitors offers “a meaningful opportunity to compete” is intended to be a proxy for whether access is being provided in substantially the same time and manner and, thus, is nondiscriminatory. *Texas Order*, ¶45.

B. Applicable Evidentiary Standard:

The BOC applicant retains at all times the ultimate burden of proof that its application satisfies all of the requirements of section 271, even if no party files comments challenging its compliance with a particular requirement. The evidentiary standards governing review of section 271 applications are intended to balance the need for reliable evidence against the recognition that, in such a complex endeavor as a section 271 proceeding, no finder of fact can expect proof to an absolute certainty. While a BOC is expected to demonstrate as thoroughly as possible that it satisfies each checklist item, the public interest standard, and the other statutory requirements, we reiterate that the BOC needs only to prove each element by “a preponderance

of the evidence,” which generally means “the greater weight of evidence, evidence which is more convincing than the evidence which is offered in opposition to it.” *Texas Order*, ¶47-48.

As held in the *Second Louisiana Order*, Staff must first determine whether the BOC has made a *prima facie* case that it meets the requirements of a particular checklist item. The BOC must plead, with appropriate supporting evidence, facts which, if true, are sufficient to establish that the requirements of section 271 have been met. Once the BOC has made such a showing, opponents must produce evidence and arguments to show that the application does not satisfy the requirements of section 271, or risk a ruling in the BOC’s favor. *Texas Order*, ¶49.

When considering filings in opposition to the BOC’s application, Staff looks for evidence that the BOC’s policies, procedures, or capabilities preclude it from satisfying the requirements of the checklist item. Mere unsupported evidence in opposition will not suffice. Although anecdotal evidence may be indicative of systemic failures, isolated incidents may not be sufficient for a commenter to overcome the BOC’s *prima facie* case. Moreover, a BOC may overcome such anecdotal evidence by, for example, providing objective performance data that demonstrate that it satisfies the statutory nondiscrimination requirement. *Texas Order*, ¶50.

To make a *prima facie* case that the BOC is meeting the requirements of a particular checklist item under section 271(c)(1)(A), the BOC must demonstrate that it is providing access or interconnection pursuant to the terms of that checklist item. In particular, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist item in quantities that competitors may reasonably demand and at an acceptable level of quality.” *Texas Order*, ¶52.

The particular showing required to demonstrate compliance will vary depending on the individual checklist item and the circumstances of the application. The FCC has given BOCs substantial leeway with respect to the evidence they present to satisfy the checklist. Although the FCC orders have provided guidance on which types of evidence it finds more persuasive, the FCC has stated that "we reiterate that we remain open to approving an application based on other types of evidence if a BOC can persuade us that such evidence demonstrates nondiscriminatory treatment and other aspects of the statutory requirements." *Texas Order*, ¶ 53. In past orders the FCC has encouraged BOCs to provide performance data in their section 271 applications to demonstrate that they are providing nondiscriminatory access to unbundled network elements to requesting carriers. The FCC has concluded that the most probative evidence that a BOC is providing nondiscriminatory access is evidence of actual commercial usage. Performance measurements are an especially effective means of providing evidence of the quality and timeliness of the access provided by a BOC to requesting carriers. Staff notes in this regard that BellSouth has provided substantial performance data in support of its renewed application.

The FCC has placed special reliance on the findings of state commissions, which, like this Commission, that have established a collaborative process through which they have developed, in conjunction with the incumbent and competing carriers, (1) a set of measures, or metrics, for reporting of performance in various areas and (2) performance standards for certain functions, typically where there can be no comparable measure based on the incumbent LEC's retail performance. The FCC has strongly encouraged this type of process, because it allows the technical details that determine how the metrics are defined and measured to be worked out with the participation of all concerned parties. *Texas Order*, ¶54.

In determining whether BellSouth has satisfied each element of the competitive checklist, Staff relies in large part on performance data collected and submitted by BellSouth. Staff notes that in Docket U-22252-C, the Commission issued its May 14, 2001 General Order in which it clarified existing measures, added new measures and adopted a self executing enforcement plan. Within 45 days of this Order, or June 28, 2001, BellSouth was ordered to file a revised Service Quality Measurements document that incorporates the changes ordered by the Commission, together with a Self-Effectuating Enforcement Mechanism (SEEM) plan which incorporates the Commission's Order. Further, as provided in the Commission's Order, the Commission shall conduct a detailed review of the performance measurements and penalty plan approximately seven and one-half (7 ½) months from the date of the Order.

BellSouth is taking actions to come into compliance with the Commission's Order, and made its compliance filings on June 28, 2001. In its comments to Staff's proposed recommendation, Staff instructed BellSouth to comment upon the current status of its efforts to comply with the reporting requirements of this Commission's May 14, 2001 General Order within the timeframes and in the manner as stated in the Order. In response, BellSouth stated that with some minor exceptions, BellSouth's compliance is on track. *See BellSouth Comments*, pp. 21-22. Staff finds BellSouth's level of compliance acceptable and requests that BellSouth continue to inform the Commission of any additional compliance issues that may arise.

Additionally, and at its July 25, 2001, Business and Executive Meeting, the Commission voted to retain Acadian Consulting to conduct the six-month review. Staff intends to commence that review immediately by (1) seeking comment on BellSouth's compliance filings and (2) reviewing, with the input of the parties, the monitoring data BellSouth has been ordered to file concerning remedies paid by BellSouth under the May 14, 2001 General Order.

BellSouth has been filing performance data with the Commission since the Commission's June 17, 1998 interim adoption of the original SQMs. This performance data does not, however, contain the level of detail nor is it as comprehensive as the data that is required in order to make a *prima facie* case of compliance with the FCC. In order to address this inadequacy, BellSouth has developed and submitted in this proceeding performance data that is in a format familiar to both the FCC and Department of Justice ("DOJ"), the "FCC Format," that is based upon the SQM set forth by the Georgia Public Service Commission in its Order in Docket 7892-U. See April 20, 2001 Varner Affidavit, ¶12. According to BellSouth, the FCC format that utilizes Georgia's SQM "substantially comports" with the revised SQM that BellSouth is implementing in response to this Commission's latest order in Docket U-22252-C. *Id.* Indeed, Staff believes that the final SQM ordered by the Georgia Commission was based in large part on the Initial Recommendation issued by Staff in Docket No. U-22252-C in June of 2000.

It is Staff's opinion that the data presented by BellSouth in the FCC format is at least as detailed and complete as that ordered by this Commission and adequate for use in this proceeding. None of the intervenors have made any serious challenge to BellSouth's use of performance data in the FCC format utilizing Georgia's SQM, except to re-urge the same claims that were presented and rejected in Docket U-22252-C. For these reasons, the Staff adopts and will review for purposes of this proceeding BellSouth's performance data in the FCC format, utilizing the Georgia ordered SQM. See Texas Order, ¶56 ("in making our evaluation we will examine whether the state commission has adopted a retail analogue or a benchmark to measure BOC performance and then review the particular level of performance the state has required."). ⁵

⁵ Notwithstanding its use of the FCC format herein, Staff fully expects the Louisiana SQM Reports to be revised and implemented as ordered by this Commission, and will review such filings for compliance as they are filed.

Several parties challenge the validity of certain data submitted by BellSouth, however, including performance data collected and reported pursuant to the performance measurements developed under the auspices of the Louisiana and Georgia Commissions. At least one commentator argues that this Commission should wait until BellSouth's performance data is audited before finding checklist compliance. Staff rejects this contention. Staff firmly believes that BellSouth's performance data should be audited, and indeed this Commission has ordered an annual audit for the next five (5) years. The first such audit is underway. See July 16, 2001 correspondence attached hereto as Exhibit "B." Staff does not believe that this Commission should delay resolution of this proceeding pending the outcome of the audit, which is intended as a safeguard to ensure data integrity going forward.

Staff notes that the FCC has previously rejected the contention that a BOC's data are generally invalid because they have not been audited, and thus cannot be relied upon to support its application. The data submitted by BellSouth in this proceeding has been subject to scrutiny and review by interested parties. To a large extent, moreover, the accuracy of the specific performance data relied upon by BellSouth is not contested. Where particular BellSouth data is disputed by commenters, this Commission has sufficient evidence in the record to examine the data collected and submitted by commenters in addition to BellSouth's data. *Texas Order*, ¶57.

The determination of whether a BOC's performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before us. There may be multiple performance measures associated with a particular checklist item, and an apparent disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist. Other measures may tell a different story, and provide a more complete picture of the quality of service being provided. Whether Staff is

applying the "substantially same time and manner" standard or the "meaningful opportunity to compete" standard, the FCC has endorsed an approach that allows examination of whether any differences in the measured performance are large enough to be deemed discriminatory under the statute. For this reason, Staff notes the FCC has held that failure of individual performance measurements does not, in itself, warrant denial of this application. *Texas Order*, ¶58.

Of further importance to this proceeding, the FCC has made it clear that not all issues raised by commentators in a 271 application need to be resolved before a finding of checklist compliance can be made. Many such issues are more appropriately resolved in other proceedings. The FCC has stated in this regard that:

There will inevitably be, at any given point in time, a variety of new and unresolved interpretive disputes about the precise content of an ILEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve per se violations of self-executing requirements of the Act. Several commentators seek to use this section 271 proceeding as a forum for the mandatory resolution of many such local competition disputes, including disputes on issues of general application that are more appropriately subjects of industry-wide notice-and-comment rulemaking. There may be other kinds of statutory proceedings, such as certain complaint proceedings, in which we may bear an obligation to resolve particular interpretive disputes raised by a carrier as a basis for its complaint. But the 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a section 271 application.

Texas Order, ¶¶23-24.

In light of the above stated FCC guidelines, Staff will not attempt to address or resolve each and every allegation made by the intervenors in this docket. Many of the issues raised by the intervenors are operational in nature and do not rise to a level of concern that would impact the issue of compliance with a checklist item. Such issues should be addressed and resolved through inter-company meetings or other collaborative processes similar to the workshops already conducted by this Commission or through the arbitration or complaint process

established by this Commission. Indeed, many of the operational type issues raised by intervenors in this proceeding were addressed in the series of informal workshops held by Staff. Further, in most instances, Staff is unable to determine based upon the record before it whether BellSouth or the CLEC or both have caused the problems or issues alleged in this proceeding.

Rather than focus on anecdotal accounts of discrete problems with BellSouth's performance alleged by certain intervenors, Staff believes it more important to review the actual performance data submitted in response to the Commission's orders to determine whether there are in fact any systemic problems that may impede the CLECs' ability to compete in the local market.⁶ Further, Staff need not decide issues presently pending in other Commission dockets, including the generic UNE cost docket or individual CLEC arbitrations. Such issues have been briefed and argued more extensively in such dockets and for the most part should ultimately be decided therein.

In response to Staff's Proposed Recommendation, NewSouth Communications Corp. ("NewSouth") requests that the Commission prohibit BellSouth from engaging in so-called "win back" activities for seven (7) days once a customer switches to another local telephone service provider. See NewSouth Comments, p. 12. Staff finds NewSouth's request to be entirely appropriate and recommends that the Commission prohibit BellSouth from engaging in any win back activities for 7 days once a customer switches to another local telephone service provider, including (1) prohibiting BellSouth's wholesale divisions from sharing information with its retail divisions, at any time, such as notice that certain end users have requested to switch local service

⁶ Staff notes that both Covad and KMC appear to claim that their CLEC specific performance data is consistently worse than the aggregate data that BellSouth provides. See Covad Comments, p. 4, KMC Comments, p.3. Staff invites Covad and KMC to file a complaint with the Commission regarding any such claims. Staff will handle any such complaint on an expedited basis.

The LPSC has previously held that BellSouth complied with this checklist item. In addition, in the *Second Louisiana Order*, the FCC held that BellSouth demonstrated that it has established nondiscriminatory procedures for access to poles, ducts, conduits, and rights-of-way. *Second Louisiana Order*, at ¶¶ 171-183. In Section III of the SGAT, and in various negotiated interconnection agreements, BellSouth continues to offer nondiscriminatory access to poles, ducts, conduits, and rights-of-way in a timely fashion. BellSouth's actions and performance at this time are consistent with the showing previously made to the LPSC and the FCC upon which both regulatory agencies made the determination that the statutory requirements for checklist item 3 were met. See *Second Louisiana Order*, fn. 151 ("BellSouth may incorporate by reference its showing in this proceeding for...(iii) access to poles, ducts, conduits, and rights-of-way.").

No party has challenged BellSouth's compliance in this area.

D. CHECKLIST ITEM 4: Unbundled Local Loops

Section 271(c)(2)(B)(iv) of the Act requires that BellSouth offer "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services." The unbundled loop is "a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises." The definition includes different types of loops, for example, two-wire and four-wire analog voice grade loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS-1 level signals. *Id.* Staff finds that BellSouth complies fully with this checklist item, thereby enabling CLECs to provide local service without investing large amounts of capital in facilities that connect each customer premises to the public switched telephone network. As of February 28, 2001, BellSouth has

provisioned more than 13,000 loops for 20 CLECs in Louisiana, and over 340,553 unbundled loops region-wide. *Milner Affidavit*, ¶ 82.

1. Local Loops

The local loop is an unbundled network element that must be provided on a nondiscriminatory basis pursuant to section 251(c)(3). BellSouth allows CLECs to access unbundled loops at any technically feasible point. *Milner Affidavit*, ¶ 81. BellSouth makes the following loop types available to CLECs: SL1 voice grade loops; SL2 voice grade loops; 2-wire ISDN digital grade loops; 2-wire ADSL loops; 2-wire HDSL loops; 4-wire HDSL loops; 4-wire DS-1 digital grade loops; 56 or 64 kbps digital grade loops; UCL; and DS3 loops. *Milner Affidavit*, ¶ 80-81; see also *Interconnection Agreement Between BellSouth and NewSouth*, Att. 2. In addition, BellSouth provides CLECs with unbundled loops served by Integrated Digital Loop Carrier (IDLC). *Milner Affidavit*, ¶ 83. Finally, CLECs may purchase additional loop types through the bona fide request process. BellSouth offers local loop transmission of the same quality and same equipment and technical specifications used by BellSouth to serve its own customers. *Milner Affidavit*, ¶ 81.

In the *Second Louisiana Order*, the FCC found that the performance data BellSouth presented on the ordering and provisioning of unbundled local loops failed to demonstrate that the access it provides to such loops is sufficient to allow an efficient competitor a meaningful opportunity to compete. Furthermore, it stated that BellSouth did not show that it could provide loop cutovers based on reasonably foreseeable demand in a timely and reliable fashion. See *Second Louisiana Order* ¶ 192-199.

To address these issues, BellSouth has provided the Commission with performance data, disaggregated by loop type, which it says demonstrates that BellSouth is providing CLECs with

unbundled loops in a manner sufficient to provide them a meaningful opportunity to compete. As the FCC has stated, a BOC can demonstrate compliance with checklist item 4 by submitting performance data evidencing the time interval for providing unbundled loops and whether due dates are met. *New York Order*, ¶ 270 & 283 (“Bell Atlantic meets the confirmed due dates of the customers of competitive carriers in the same time and manner as it meets the confirmed due dates of its retail customers.”). BellSouth has provided performance data in the FCC format for March, April and May 2001 relating to its loop provisioning and maintenance and repair functions for CLECs, disaggregated by loop type, including voice loops and loops capable of supporting high speed data. *See Texas Order*, ¶ 249.

In addition, in this proceeding BellSouth demonstrates its ability to accomplish a hot cut in a timely, accurate manner. *See discussion at p. 52, supra*. Hot cuts involve the conversion of an existing BellSouth customer to the network of a competitor by transferring the customer’s in-service loop over to the CLEC’s network. *Milner Affidavit*, ¶ 100. BellSouth has implemented three hot cut processes, two involving order coordination and one that does not involve such coordination. *Id.* The two processes that include order coordination are a time-specific cutover, and a non-time-specific cutover. Both of these processes involve BellSouth and the CLEC working together to establish a time for the cutover. In the third option, the CLEC merely specifies the date on which the cut is to occur but leaves the time of the cutover to BellSouth’s discretion. *Milner Affidavit*, ¶¶ 101-103. These three options give the CLEC choices depending on its business plan and the needs of its end user. As the FCC noted, “[t]he ability of a BOC to provision working, trouble-free loops through hot cuts is critically important in light of the substantial risk that a defective hot cut will result in competing carrier customers experiencing service outages for more than a brief period.” *Texas Order*, ¶ 256. BellSouth contends that it

provides coordinated hot cuts in a timely manner, at an acceptable level of quality, with minimal service disruptions, and with a minimum number of troubles following installation. See Kansas/Oklahoma Order, ¶ 201.

AT&T Witness Berger cites numerous examples of problems with hot cuts (although she acknowledges that BellSouth and AT&T have recently on May 15, 2001 executed a Memorandum of Understanding concerning methods and procedures for "hot cuts" on a going-forward basis). Issues concerning hot-cuts were also discussed at great length in the CLEC collaboratives. As of the last meeting, none of the CLEC participants had any current problems with "hot cuts" and Staff and the parties agreed to monitor this item. Relative to Hot Cuts (B.2.13.1 through B.2.15.4), BellSouth met or exceeded the benchmark for all six sub-metrics with CLEC activity in April and for all seven in May.

AT&T also complains that BellSouth's method for addressing erroneous disconnects is not comparable to BellSouth's method for its own customers. *Berger Affidavit*, p. 12. In response, BellSouth points out the fact that AT&T has not performed any hot cuts in Louisiana. BellSouth also points out that it is AT&T who is in control of when the disconnect is completed by BellSouth in this instance. Service orders must be issued in order for BellSouth to reestablish service to the end user. This is the same process that occurs for an erroneous disconnect of a BellSouth end user and both situations are handled as a provisioning issue, rather than a maintenance issue. *Ainsworth Reply Affidavit*, ¶41.

AT&T also complains that if an erroneous disconnect occurs due to a CLEC error, BellSouth treats it like a new loop, rather than a maintenance issue, and the customer can be out of service for up to seven days. *Id.* at p. 14-15. BellSouth utilizes the same procedure when it erroneously disconnects its own end user. New service orders must be issued and are treated as a

provisioning matter, rather than a maintenance issue. Staff is unaware of any requirement that BellSouth is violating by not treating AT&T's mistakes any different from its own. It is Staff's opinion that AT&T should review its own processes to minimize or eliminate the instances in which it makes an erroneous request to BellSouth to disconnect its end user.

AT&T further objects to BellSouth's request for a four-hour window to start a conversion when a customer's service is provided over BellSouth's IDLC and that the parties disagree regarding the start and stop times. *Berger Affidavit*, pp. 12-14. Staff is not aware of any such request in this proceeding, but will address any such issues during the six-month review of the service quality measurements. AT&T also voices concern regarding the hot cut measures adopted by the Commission. Staff believes that the hot cut measures adopted by the Commission are appropriate.

KMC voices concern over the fact that BellSouth will mistakenly indicate that there are no facilities to complete an order for an unbundled loop when, in fact, there are such facilities. *Braddock Affidavit*, ¶3. Further, KMC complains that BellSouth will cancel a due date at the last minute due to a lack of facilities. *Dermint Affidavit*, ¶2. BellSouth responds to these complaints through the sworn testimony of Mr. Ainsworth. *See Ainsworth Reply Affidavit*, ¶¶ 23-25, 44. These issues were discussed at length during the collaborative workshops held by this Commission. Staff is convinced that BellSouth provisions UNE loops to CLECs in the same manner as it provisions loops to its own retail customers. The process that BellSouth goes through to determine whether facilities are available to complete a CLEC's order are the same as those that BellSouth uses to complete its own retail orders. Indeed, during the collaborative workshops, and in order to address this issue, Staff understood that the CLECs were to have submitted a Bona Fide Request to BellSouth to develop a method for provisioning loops in

which a CLEC could ascertain the availability of facilities prior to placing an order. Staff instructed the parties to comment in response to this proposed recommendation on the status of any such request. BellSouth responded that such request has been submitted as CR0461 to the Change Control Process and will be prioritized by the CLECs. See BellSouth Comments, p. 23.

KMC raises additional issues that were addressed in the collaborative workshops. KMC claims that BellSouth will often miss a due date for order coordinated, time-specific hot cuts to the point where KMC has stopped ordering them. *Chiasson Affidavit*, 2. BellSouth does not respond to trouble reports and refuses to act on a trouble claiming it is KMC's responsibility, only to acknowledge that it is BellSouth's problem one week later. *Id.* at 3. BellSouth responds to these allegations. *Ainsworth Reply Affidavit*, ¶¶ 48-49. These issues do not appear to indicate systemic problems that would warrant a finding of checklist non-compliance. See Kansas/Oklahoma Order, ¶159. Staff encourages BellSouth and KMC to resolve these issues informally or bring them to the attention of the Commission through its normal complaint process.

2. Access to xDSL-capable Loops

BellSouth must demonstrate that it offers CLECs nondiscriminatory access to xDSL-capable loops in Louisiana.¹² To compensate for differing parameters such as the end user's distance from his serving wire center, BellSouth offers CLECs a variety of unbundled loops that may support DSL services from the CLEC to its end user customers. These loop types are known as ADSL-capable loop; HDSL-capable loop; ISDN loop; Universal Digital Channel (UDC); Unbundled Copper Loop (UCL), Short and Long; and UCL-Nondesign (UCL-ND). *Latham Affidavit*, ¶3; see also *Interconnection Agreement Between BellSouth and COVAD*,

¹² The FCC has stated that it would "find it most persuasive if future applicants under 271...make a separate and comprehensive evidentiary showing with respect to the provision of xDSL-capable loops." *New York Order*, 330.

Amend. § 2.2.9. As of February 28, 2001, BellSouth had provisioned 1,301 two-wire ADSL loops; 66 two-wire HDSL loops; and one (1) four-wire HDSL loop to over 20 different CLECs in Louisiana. *Milner Affidavit*, ¶ 97.

Further, Staff is aware of the fact that in response to CLEC requests for an xDSL capable loop that is similar in price and provisioning practices to an SL1, BellSouth recently began offering a "nondesignated" unbundled copper loop ("UCL-ND"). Staff believes that the UCL-ND holds the promise of spurring the deployment of advanced services to end users in Louisiana, including those located in rural areas. Staff instructed BellSouth as well as the other parties to this proceeding to provide comments in response to the proposed recommendation concerning the UCL-ND, including the circumstances surrounding its development, whether CLECs participated in its development, the pricing of the product in relation to other xDSL capable loops, the manner that it is provisioned, the number of such loops purchased by CLECs within the state of Louisiana and any outstanding or unresolved issues surrounding this loop offering. In response, BellSouth as well as other parties provided further comments regarding the UCL-ND.

In its *Texas Order*, the FCC commended the Texas state commission for developing comprehensive measures to assess SWBT's performance in provisioning xDSL-capable loops and related services in Texas. *See Texas Order*, ¶283. BellSouth has presented this Commission with comparable performance data, specific to xDSL loops, to demonstrate that it is providing CLECs with nondiscriminatory access to such loops. Based on this performance data, BellSouth claims that this Commission will be able to conclude, as did the FCC in the *Kansas/Oklahoma* decision, that the BOC "provisions xDSL-capable loops for competing carriers in substantially the same time and manner that it installs xDSL-capable loops for its own retail operations." *Kansas/Oklahoma*, ¶ 185.

Staff notes the commentator Covad provided performance results from BellSouth's March 2001 MSS report and claims that the results demonstrate that BellSouth is not providing non-discriminatory access. See Covad Comments, pp. 15-22. Further, Covad filed comments to BellSouth's May performance data in the FCC format on July 23, 2001. Mr. Varner addressed Covad's initial performance criticisms in his reply affidavit at ¶¶135-155. Staff instructs BellSouth to respond to Covad and AT&T's criticisms in their comments to BellSouth's May performance data filed July 23, 2001.

In the interim, Staff makes the following comments with regard to BellSouth's performance in this area. A manual count of MSS data for April and May 2001 for all UNE measurements with CLEC activity indicates that BellSouth met 20 of 25 xDSL benchmarks in April and 19 of 27 in May. An analysis of xDSL product data across all UNE categories (Ordering, Provisioning and Maintenance & Repair) indicates that BellSouth met 80% (20 of 25) of the measures with CLEC activity in April. Results in May decreased to 70.4% (19 of 27) of all measurements being met. Within Provisioning, BellSouth demonstrated strong improvement in May with 87.5% (7 of 8) of measurements met as compared to April with 66.7% (4 of 6). Results in Ordering fell slightly from a level of 80% (8 of 10) of the measurements at parity in April to a level of 70% (7 of 10) in May. Also, results in Maintenance and Repair experienced a more serious drop from 88.9% (8 of 9) of the measurements in April to a level of 55.6% (5 of 9). Because there are only 9 submeasures in this category, Staff realizes that any miss can significantly impact the overall percentages. Staff also believes that implementation of the SEEMs will improve performance in this category. Staff believes in particular that BellSouth should pay particular attention (in addition to the FOC & Reject Completeness addressed under Checklist Item 2 generally) in the near future to its performance under the % Repeat Troubles

within 30 Days category. BellSouth improved results in June with respect to overall measurements of the xDSL product by meeting 81.5% (22 of 27) of all measurements. Within Provisioning, BellSouth demonstrated strong improvement in June by meeting 100% (9 of 9) of measurements. Within Maintenance and Repair, BellSouth demonstrated improvement by meeting 77.8% (7 of 9) measurements. Within Ordering, results fell slightly when BellSouth met 66.7% (6 of 9) measurements.

Staff intends to monitor performance in this area in the 6-month review, and will take whatever action is necessary to ensure sustained performance in this area.

3. Loop Conditioning

To further enable CLECs to provide high-speed data services to their end users, CLECs have the option of selecting the precise conditioning (i.e. loop modification) they desire on their loop. *Latham Affidavit*, ¶ 31; Access One Agmt., Att 2, § 2.2. If a CLEC needs to have a loop conditioned, it can use BellSouth's Unbundled Loop Modification (ULM) process in order to modify any existing loop to be compatible with the CLEC's particular hardware requirements. *Latham Affidavit*, ¶ 31. The ULM process conditions the loop by the removal of any devices that may diminish the capability of the loop to deliver high-speed switched wireline capability, including xDSL service. The CLEC may select the level of conditioning it wants, and will only pay for the level of conditioning it selects. *Latham Affidavit*, ¶ 31. BellSouth will provide line conditioning upon request from a CLEC for an unbundled loop, regardless of whether or not BellSouth offers advanced services to the end-user customer on that loop. *Id.* Through January 2001, CLECs in Louisiana had made 1 request for loop conditioning. Region-wide, CLECs have made 52 requests. *Milner Affidavit*, ¶ 87.

Staff notes that the costs/rates for these ULM processes are pending in the generic UNE cost docket, Docket U-24714-A, in which Staff submitted testimony recommending rates for such processes that are dramatically lower than the rates proposed by BellSouth.

4. Access to Line Sharing on the Unbundled Loop

Line-sharing allows CLECs to provide high speed data service to BellSouth voice customers. BellSouth provides access to the high frequency portion of the loop as an unbundled network element. See Covad Agmnt., 4/25/00 Amendment; Interconnection Agreement between BellSouth and Access One, Att. 2, Exh. C. Like SWBT, BellSouth developed the line-sharing product in a collaborative with CLECs, and is continuing to work with CLECs on an ongoing basis to resolve issues as they arise. *Williams Affidavit*, ¶ 8. As of April 1, 2001, BellSouth shows that it has provisioned 267 line-sharing arrangements in Louisiana, and 2,542 arrangements region-wide. *Milner Affidavit*, ¶ 93. In its Proposed Recommendation, Staff instructed BellSouth, as well as the other parties to this proceeding, to provide further comment regarding the line sharing collaborative referenced by Mr. Williams, including the number of meetings held, the participants, the issues that were addressed and resolved and any other issues from the collaborative that remain unresolved. Staff notes with approval the fact that BellSouth hosted 73 Line Sharing Industry Collaborative meetings during 2000 and has hosted 38 Line Sharing and Line Splitting Collaborative meetings in 2001. Of 260 Action Items, only 9 remain open. BellSouth Comments, p.29.

In a line-sharing arrangement, the high frequency portion of the loop is the frequency range above the voice band on a copper loop facility that is being used to carry analog circuit switched voice band transmission. The data signal typically is split off from the voice signal by a splitter and then delivered to a digital subscriber line access multiplexer (DSLAM) located in

the CLEC's network at its collocation space. The DSLAM converts the data signal into packets for transmission over the CLEC's network. *Williams Affidavit*, ¶ 4. BellSouth claims that it provides line-sharing in accordance with the obligations set forth in the FCC's *Line-Sharing Order* and *Line-Sharing Reconsideration Order*.¹³ Specifically, line-sharing is available to a single requesting carrier, on loops that carry BellSouth's POTS, so long as the xDSL technology deployed by the requesting carrier does not interfere with the analog voice band transmissions. BellSouth allows line-sharing CLECs to deploy any version of xDSL that is presumed acceptable for shared-line deployment in accordance with FCC rules and will not significantly degrade analog voice service. *Williams Affidavit*, ¶ 6.

Further, BellSouth will facilitate line-splitting between CLECs using BellSouth's UNEs in full compliance with the FCC's rules. *Williams Affidavit*, ¶ 33; SGAT, II.A.9. Specifically, BellSouth facilitates line-splitting by CLECs by cross-connecting a loop and a port to the collocation space of either the voice CLEC or the data CLEC. The CLECs may then connect the loop and the port to a CLEC-owned splitter and split the line themselves. BellSouth offers the same arrangement to CLECs as that described by the FCC in the Texas 271 Order and the *Line-Sharing Reconsideration Order*. By allowing CLECs to engage in line-splitting, BellSouth's current offerings meet all FCC requirements for line splitting. *Texas Order*, ¶¶ 323-329.

AT&T witness Turner and WorldCom witness Darnell contend that for numerous reasons, BellSouth is not in compliance with the FCC's Advanced Services Order regarding line splitting and line sharing. Initially, Staff notes that neither AT&T nor WorldCom is engaged in the provision of any advanced services within the state of Louisiana.

¹³ *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CLEC Docket No. 98-147 and Fourth Report and Order, CLEC Docket No. 96-98, 14 FCC Rcd 20,912 (1999) ("Line-Sharing Order");

WorldCom contends that BellSouth refuses to permit line splitting when a customer wants to receive its voice service from a CLEC and its DSL (or data) service from BellSouth. *Darnell Affidavit*, ¶¶ 7-8; *Demint Affidavit*, 10. In other words, BellSouth will not provide a customer with its retail DSL service unless that customer also purchases its voice service from BellSouth as well. Although Staff finds BellSouth's position on this issue to be rather disturbing, Staff recognizes that BellSouth's position is not contrary to the FCC's rulings on this point. In its *Line Sharing Reconsideration Order*, the FCC stated, "We deny, however, AT&T's request that the Commission clarify that incumbent LECs must continue to provide xDSL service in the event customers choose to obtain service from a competing carrier on the same line because we find that the *Line Sharing Order* contained no such requirement." *Line Sharing Reconsideration Order*, ¶26. The FCC then expressly stated that its Line Sharing Order "does not require that [LECs] provide xDSL service when they are no longer the voice provider." *Id.*

Although BellSouth appears to be within its rights to refuse to provide its xDSL service in situations where it is not the voice provider, Staff would recommend that in those situations where an end user is currently receiving, or wishes to receive in the future, voice service from a CLEC, and that end user wishes to receive xDSL service from BellSouth utilizing the same lines as the CLEC provides voice service, BellSouth should be ordered to provide its xDSL service directly to the end user via the same UNE loop that the CLEC is utilizing to provide voice service to the end user. The CLEC shall be prevented from charging BellSouth for use of its UNE loop in accordance with the Staff's recommendation. In all other respects, BellSouth shall provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice service under the same terms and conditions that BellSouth

offers the high frequency portion of its loop to CLECs in line-sharing arrangements. Any issues regarding this recommendation should be referred to the regional line sharing collaborative for review and resolution. BellSouth may petition the Commission for a stay of this requirement upon presentation of evidence regarding substantial operational issues that must be resolved.

Further, AT&T makes several allegations regarding BellSouth's line sharing and line splitting offerings. *See Turner Affidavit*, pp. 18-32. AT&T claims that BellSouth does not provide line splitting in Louisiana and does not have methods and procedures for line splitting. It is rather difficult to square AT&T's allegations with the information provided by BellSouth regarding the line sharing arrangements provisioned in Louisiana and the testimony of BellSouth's product manager, Thomas G. Williams, who states that BellSouth presently offers line splitting and line sharing in Louisiana pursuant to procedures developed in a Line Splitting collaborative that included many CLECs, including AT&T. *Williams Reply Affidavit*, ¶6.

Staff instructed AT&T to file comments in response to the Proposed Recommendation that state whether AT&T has attempted to engage in line splitting or line sharing in Louisiana, how many orders it has submitted to BellSouth in Louisiana for such arrangements, and the status of those orders. AT&T responded that it has not attempted to engage in line splitting or line sharing in Louisiana due to BellSouth's practices. *AT&T Comments*, p. 36.

Further, AT&T claims that CLECs are precluded from offering both voice and data services to a customer because BellSouth will not provide the splitter. *Turner Affidavit*, pp. 18-29. It is Staff's understanding, however, that BellSouth is not obligated to provide the splitter in a line splitting arrangement:

We reject AT&T's argument that SWBT has a present obligation to furnish the splitter when AT&T engages in line splitting over the UNE-P. The Commission has never exercised its legislative rulemaking authority under section 251(d)(2) to

require incumbent LECs to provide access to the splitter, and *incumbent LECs therefore have no obligation to make the splitter available.*

Texas Order, 327 (emphasis added). A CLEC is free, however, to install its own splitter in its collocation space if it desires to offer both voice and data services over the same loop. See Williams Reply Affidavit, ¶¶ 7-9.

Contrary to AT&T's further contentions, BellSouth is not required to maintain a CLEC's UNE-P arrangement where the CLEC wants to engage in line splitting. The UNE-P arrangement consists of a combined loop and port arrangement in which a CLEC can provide voice service to an end user in competition with BellSouth without collocating any equipment in a BellSouth central office. If the CLEC wants to provide a data service to that same end user over that same loop, or wants to partner with another CLEC to engage in line splitting to provide a data service to that end user over that same loop, then the loop and port must be disconnected and both terminated to the data CLEC's collocation space with cross connections. By terminating the loop and port at the CLEC's collocation space, the line can be "split" to allow the voice traffic to proceed to one switch, while the data traffic is routed to the CLEC owned DSLAM. As Mr. Williams points out, the central office architecture for line splitting is vastly different from the relatively simple UNE-P architecture. See Exhibits TGW-4, TGW-5 and TGW-6, attached to Williams Reply Affidavit. BellSouth's practices in this regard appear to be in compliance with applicable FCC requirements:

For instance, if a competing carrier is providing voice service using the UNE-platform, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to replace its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services. As we described in the Texas 271 Order, in this situation, the incumbent must provide the loop that was part of the existing UNE-platform as the unbundled xDSL-capable loop, unless

the loop that was used for UNE-platform is not capable of providing xDSL service."

FCC Line Sharing Reconsideration Order, ¶19.

In sum, none of the issues raised by AT&T appear to be required by FCC rule or regulation and do not affect whether BellSouth is in compliance with checklist item no. 4. In its Proposed Recommendation, Staff sought comments from the parties to this proceeding whether there are substantial unresolved issues surrounding line sharing and line splitting that would warrant this Commission's opening a generic docket for their resolution. In response, no party requested opening a generic docket. In light of this fact and apparent success of the existing collaborative efforts, Staff does not believe any generic docket should be opened at this time.

The pre-ordering, ordering, provisioning and maintenance and repair processes for the line-sharing product are very similar to the processes for xDSL-capable loops. *Williams Affidavit, ¶ 22-27.* For loop makeup information, the process is the same whether the CLEC wishes to obtain an xDSL-capable loop, or the high frequency portion of the loop. *Williams Affidavit, ¶ 22.*

BellSouth has provided the Commission with performance data specific to line-sharing in the FCC data format to demonstrate with empirical evidence its compliance with checklist item 4. An analysis of Line Sharing product data across all UNE categories (Ordering, Provisioning and Maintenance and Repair) indicates that BellSouth demonstrated strong performance in both months by meeting 87.5% (14 of 16) of the measures with CLEC activity in April, and 100% (5 of 5) in May. Relative to Line Sharing across all categories indicates performance dropped in June when BellSouth met only 57.1% (8 of 14) measurements with CLEC activity. Of the six measures missed in June, an analysis shows that in half of the cases the CLEC volume was only between 1 and 7 activities. In the other half, where there was substantial activity, BellSouth

missed the 95% benchmark, but it did achieve results in excess of 91%. Although BellSouth's performance did not achieve the stringent benchmark, it was nevertheless at a high level.

E. CHECKLIST ITEM 5: Unbundled Local Transport

Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." Interoffice transmission facilities include both dedicated transport and shared transport. See Second Louisiana Order, at ¶ 201. Dedicated transport is defined as "incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers." 47 U.S.C. 51.319(d)(1)(i). Shared transport is defined as "incumbent LEC transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC's network." 47 U.S.C. 51.319(d)(1)(ii).

In the *Second Louisiana Order*, the FCC concluded that, but for the deficiencies in the OSS systems noted earlier under checklist item 2 (access to unbundled network elements), BellSouth demonstrated that it provides unbundled local transport as required in Section 271. See Second Louisiana Order, ¶ 202. BellSouth continues to provide dedicated and shared transport between end offices, between tandems, and between tandems and end offices, and has procedures in place for the ordering, provisioning and maintenance of both dedicated and shared transport. See Milner Affidavit, ¶ 113; SGAT, VI; *Covad Agmnt.*, Att. 2, § 8.0. BellSouth offers both dedicated and shared transport at high levels of capacity, including DS3 and OCn levels.

makes a service available only to a specific category of retail subscribers, however, a state commission may prohibit a carrier that obtains the service pursuant to section 251(c)(4)(A) from offering the service to a different category of subscribers. If a state creates such a limitation, it must do so consistent with requirements established by the Federal Communications Commission. In accordance with sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv), a BOC must also demonstrate that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services. *Texas Order*, ¶387.

Based on the record evidence, Staff concludes that BellSouth demonstrates that it makes telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3), and thus satisfies the requirements of checklist item 14. None of the parties to this docket make any serious contention otherwise. Staff notes that the FCC previously held that "but for deficiencies in its OSS systems, BellSouth demonstrates that it makes telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3)." Second Louisiana Order, ¶309. Staff has previously discussed and concluded that BellSouth has remedied the concerns regarding its OSS sufficient to comply with checklist item 2. See discussion under checklist item 2. Thus, Staff recommends that this Commission find BellSouth in compliance with checklist item 14.

In addition to the above recommendation, Staff would recommend, in accordance with Commission Order No. U-22020, a review of the wholesale discount rate previously established by the Commission.¹⁵

V. CONCLUSION

¹⁵ In Order No. U-22020, this Commission established a wholesale discount rate of 20.72% for resale of BellSouth's unbundled retail features, functions, capabilities and services, and bundled retail services including vertical features. In addition to establishing this rate, the Commission ordered the Staff to monitor the effect of the discount adopted

For the reasons stated herein, the Staff of the Louisiana Public Service Commission recommends that the Commission find that BellSouth Telecommunications, Inc. is in compliance with the requirements of the Telecommunications Act of 1996, including the checklist requirements in section 271 (c)(2)(B) and the Federal Communications Commission's ("FCC's") orders promulgated thereunder; and, therefore, endorse the application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. to the FCC seeking authority under section 271 of the Telecommunications Act of 1996 to provide interLATA service originating within the State of Louisiana. Staff also therefore recommends approval of BellSouth's Statement of Generally Available Terms and Conditions.

Further, Staff recommends that the Commission take action in addition to finding that BellSouth is in compliance with existing FCC requirements, in order to ensure that competition in the local telecommunications service market continues to flourish in Louisiana. To this end, Staff recommends that the Commission enter a separate order amending its Rules for Competition in the Local Telecommunications Market as follows:

1. That the Commission adopt the conclusion in the Order issued by the Georgia Public Service Commission in Docket No. 10692-U, dated February 1, 2000, that "currently combines" means ordinarily combined within the BellSouth network, in the manner in which they are typically combined. Staff further recommends that the Commission find that loop/port and loop/transport combinations are ordinarily combined in BellSouth's network. Thus, BellSouth must provide combinations of typically combined elements, even if the particular elements being ordered are not actually connected at the time the order is placed.

and it further ordered that a review of the resale rate be undertaken within eighteen months of its implementation. Staff never undertook said review.

The recurring rate for a new combination shall be the same as the recurring rate for an exiting combination. The nonrecurring rate for a new loop/port combination shall be the sum of the nonrecurring rate for the loop and the nonrecurring rate for the port as established in Docket U-24714-A. The nonrecurring rate for a new loop/transport combination shall be the rate for such combination in the New Orleans MSA as modified in Docket No. U-24714-A. To the extent the Commission has not established nonrecurring rates for a particular new combination, the nonrecurring rate shall be the sum of the nonrecurring rates for the individual elements. The Commission shall reconsider these requirements immediately after any United States Supreme Court decision regarding this issue.

2. That the Commission order BellSouth to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice service under the same terms and conditions that BellSouth offers the high frequency portion of its loops to CLECs in line-sharing arrangements. Staff further recommends that the CLEC shall be prevented from charging BellSouth for use of its UNE loop. Any issues regarding implementation of this recommendation shall be referred to the regional line sharing/line splitting collaborative for review and resolution. BellSouth may petition the Commission for a stay of this requirement upon presentation of evidence regarding substantial operational issues that must be resolved.

3. That the Commission prohibit BellSouth from engaging in any win back activities for 7 days once a customer switches to another local telephone service provider, including (1) prohibiting BellSouth's wholesale divisions from sharing information with its retail divisions, at any time, such as notice that certain end users have requested to switch local service providers,

and (2) prohibiting BellSouth from including any marketing information in its final bill sent to customers that have switched providers.

4. That the Commission order BellSouth to waive any application fee or charges that would otherwise be due from a CLEC that decides to reconfigure its existing collocation power arrangement so as to purchase smaller increments of power from BellSouth's BDFB, rather than directly from BellSouth's main power board. Where a CLEC decided to reconfigure its collocation power so as to purchase smaller increments of power from BellSouth's BDFB, Staff recommends that the Commission require the CLEC to submit an application to BellSouth regarding such reconfiguration and order BellSouth to respond to the application and permit the conversion within seven (7) calendar days.

Further, Staff recommends that the Commission order BellSouth to provide CLECs with an additional option by allowing CLECs to purchase power directly from an electric utility company. Under such an option, the CLEC would be responsible for contracting with the electric utility company for their own power feed and meter, and would be financially responsible for purchasing all equipment necessary to accomplish the arrangement, including inverters, batteries, power boards, bus bars, BDFBs, backup power supplies and cabling. The actual work to install this arrangement would be performed by a certified vendor hired by the CLEC. Such CLEC must comply with all applicable safety codes, including the National Electric Safety Codes, in installing this power arrangement. BellSouth shall waive any application fee or charge that would otherwise be due from a CLEC that decides to reconfigure any existing collocation power arrangement so as to purchase power directly from an electric utility company as provided herein.

5. That the Commission order BellSouth to allocate security costs on a square foot basis rather than on the basis of the number of occupants in the central office.

6. That the Commission establish a cageless collocation interval of sixty (60) calendar days for ordinary arrangements and ninety (90) calendar days for extraordinary arrangements. Such intervals shall run from date of firm order. The terms "ordinary" and "extraordinary" shall have the same meaning as is ascribed to them in General Order dated October 9, 2000. BellSouth shall be permitted to file for waiver of the applicable benchmarks in appropriate circumstances.

7. That the Commission open a docket in accordance with Commission Order No. U-22020 to review the wholesale discount rate previously established by the Commission.

8. That the Commission direct Staff to develop a monetary penalty in its six-month interim review in Docket No. U-22252-C to be imposed upon BellSouth to ensure that the implementation of fully parsed CSR data functionality occurs as scheduled. Such penalty should take effect only after BellSouth has obtained FCC approval to offer interLATA service in Louisiana.

9. That the Commission Order BellSouth to implement the C-Order process no later than April 1, 2002. Further, Staff recommends that the Commission direct Staff in the six-month review process in Docket No. U-22252-C to develop a measure to track the number of premature disconnects resulting from the two-order process utilized by BellSouth for UNE-P conversions; and to include the measure in Tier-1 and Tier-2 remedies as appropriate. Such penalties to be implemented upon the FCC's approval of BellSouth's petition to provide interLATA service in Louisiana.

Respectfully submitted,
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**BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION**

**LOUISIANA PUBLIC SERVICE COMMISSION,
EX PARTE**

DOCKET NO. R-26173

**In re: BellSouth's provision of ADSL Service to end-users over CLEC loops- Pursuant
to the Commission's directive in Order U-22252-E**

LOUISIANA PUBLIC SERVICE
COMMISSION

SEP 12 PM 11 08

STAFF'S FINAL RECOMMENDATION

BACKGROUND

The Louisiana Public Service Commission Staff ("Staff") filed its Final Recommendation in Docket Number U-22252-E, In re: BellSouth's Section 271 Pre-application, on August 31, 2001. Among the numerous issues addressed therein was a discussion of MCI WorldCom Communications, Inc.'s ("WorldCom") contentions regarding BellSouth Telecommunication's, Inc. ("BellSouth") practices in line splitting arrangements.¹ Staff described its understanding of the policy as follows, "BellSouth will not provide a customer with its retail DSL service unless that customer also purchases its voice service from BellSouth."² After discussing the matter in greater detail, Staff ultimately recommended the following:

That the Commission order BellSouth to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice service under the same terms and conditions that BellSouth offers the high frequency portion of its loops in line sharing arrangements. Staff further recommends that

¹ Staff's Final Recommendation, Docket U-22252-E, pages 86-87.

² Id at 86.

the CLEC shall be prevented from charging BellSouth for use of its UNE loop. Any issues regarding implementation of this recommendation shall be referred to the regional line sharing/line splitting collaborative for review and resolution. BellSouth may petition the Commission for a stay of this requirement upon presentation of evidence regarding substantial operational issues that must be resolved.³

Staff's Final Recommendation, including the above cited passage, was considered by the Louisiana Public Service Commission ("LPSC", "Commission") at its September 19, 2001 Business and Executive Session. At that Session, Commissioner Blossman moved to adopt Staff's Final Recommendation, with a few modifications, one of which directly addressed the above quoted section. The Motion directed Staff to further study the issue of whether BellSouth should be required to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice services. The motion was unanimously adopted by the Commission and memorialized in Order U-22252-E, issued September 21, 2001.

In compliance with the Commission's directive, Staff published the following in the Commission's Official Bulletin dated December 7, 2001 Docket R-26173,

Pursuant to the Commission's directive in Order U-22252-E, Staff was to further study the issue of whether BellSouth Telecommunications, Inc. should be required to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice services.

Parties were given 25 days to intervene and/or file comments in the docket. Interventions and/or initial comments were received from the following parties: ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom ("DeltaCom"), Xspedius Corporation ("Xspedius"), Cox Louisiana Telecom, L.L.C., d/b/a Cox Communications ("Cox"),

³ Id at 113.

NewSouth Communications Corporation ("NewSouth"), Access Integrated Networks, Inc. ("Access"), BellSouth, KMC Telecom, Inc. ("KMC") and the Southeastern Competitive Carriers Association ("SECCA").⁴

Following the receipt of initial comments, Staff received both formal and informal requests from the interveners to file additional/reply comments. By notice dated May 9, 2002, Staff granted the parties the opportunity to file additional comments by May 24, 2002. The following parties provided additional/reply comments: BellSouth, KMC, SECCA and WorldCom. Access, DeltaCom, NewSouth and Xspedius jointly filed reply comments.

After thoroughly reviewing all initial and reply comments, Staff issued a Proposed Recommendation on July 10, 2002. In order to clarify the opportunity for exceptions and replies to the recommendation, a Procedural Schedule and Order was issued on July 25, 2002. Pursuant to the procedural schedule, exceptions were received from BellSouth. Reply comments were received from KMC, WorldCom and SECCA and jointly from DeltaCom, Access, NewSouth and Xspedius. Additionally, an informal technical conference was held on September 3, 2002, with representatives from all of the above parties present.

SUMMARY OF COMMENTS

For the sake of brevity, Staff refers all parties to its detailed summary of the initial and reply comments as contained in the Proposed Recommendation issued July 10, 2002. A short summary of the exceptions and replies will follow the proposed recommendation section.

⁴ Also included in the docket is a letter from Network Telephone Company addressed to the Commission's Executive Secretary. It is unclear whether any intervener has been served with this correspondence.

JURISDICTION

The powers and duties of the Louisiana Public Service Commission are contained in Article IV § 21 of the Louisiana Constitution of 1974. As stated therein, the Commission has the authority to:

“regulate all common carriers and public utilities and has all other regulatory authority as provided by law. The Commission shall adopt and enforce reasonable rules, regulations and procedures which are necessary for the discharge of its duties including other powers and duties as provided by law.”

Pursuant to its constitutional authority, the Commission adopted the Regulations for Competition in the Local Telecommunications Market (“Local Competition Regulations”, “Regulations”)⁵, as most recently amended by the April 5, 2000 General Order (“General Order”). As stated in the Preamble to the Regulations,

Through the development of effective competition, which promotes the accessibility of new and innovative services at non-discriminatory prices consumers can and are willing to pay, and which results in wider deployment of existing services at competitive prices, the public interest will be promoted.

Section 201. A. of the Local Competition Regulations describes the public policy as follows:

(T)he Louisiana Public Service Commission hereby finds, determines and declares that the promotion of competition in all local telecommunications markets in Louisiana is in the public interest.

In furtherance of the above stated goal to promote competition in all local telecommunications markets in Louisiana, this Commission has instituted a number of proceedings. One such proceeding, Docket U-22252-C, *In re: BellSouth*

⁵ The actual Regulations are contained in “Appendix B” to the General Order.

Telecommunications, Inc. Service Quality Measurements, established performance measurements to monitor the service BellSouth provides to its competitors. No less than four orders have been issued in that docket, all of which have fostered the Commission's goals of promoting competition. Further, Docket U-24714, Subdocket A, *In re: Final Deaveraging of BellSouth Telecommunications, Inc., UNE Rates*, established new cost based rates for UNEs available to CLECs. Staff notes that following the issuance of the Order in that docket, many new competitors have entered the market. Additionally, in connection with Staff's review of BellSouth's 271 pre-application filing in Docket U-22252-E, several recommendations were made to further promote competition.

STAFF'S PROPOSED RECOMMENDATION

Staff believes its discussion of the pending issue should be prefaced with a brief synopsis of the scope of this rulemaking. In Docket U-22252-E, Staff made the following recommendation:

That the Commission order BellSouth to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice service under the same terms and conditions that BellSouth offers the high frequency portion of its loops in line sharing arrangements. Staff further recommends that the CLEC shall be prevented from charging BellSouth for use of its UNE loop. Any issues regarding implementation of this recommendation shall be referred to the regional line sharing/line splitting collaborative for review and resolution. BellSouth may petition the Commission for a stay of this requirement upon presentation of evidence regarding substantial operational issues that must be resolved.

When the matter was considered at the Commission's September 2001 Business and Executive Session, the Commission voted to accept Staff's Recommendation, with Staff

directed to determine whether ADSL service could be added to UNE lines in the future.⁶

Order U-22252, E memorialized the Commission's vote, instructing Staff to,

 further study the issue of requiring BellSouth to provide its ADSL service to end users over the high frequency portion of the same loop being used by a CLEC to provide voice service until such time as the operational and policy issues associated therewith are fully explored.⁷

Based on the above, a presumption exists Staff's Recommendation in Docket U-22252, E should be adopted, absent any "operational or policy issues" prohibiting its implementation. Comments received from the parties suggest additional concerns must also be addressed, as evidenced by comments received relative to possible jurisdictional and technical issues. Neither the vote of the Commission, nor the directive of the order, suggests any such issues were a concern prior to this docket being opened. Nonetheless, to insure all issues are thoroughly explored, this Recommendation will address not only "operational and policy" issues, but jurisdictional and technical issues as well. Accordingly, Staff will address the issues in turn. Based on the conclusions that follow, it is Staff's opinion that the recommendation set forth in docket U-22252-E be reaffirmed and adopted.

Policy Issues

Before addressing any "policy" arguments made by the parties, Staff reminds that parties that this Commission's policy, as stated in the Local Competition rules, is to promote competition in all telecommunications markets. Adopting Staff's

⁶ See Official Transcripts of the September 21, 2001 Business and Executive Session.

⁷ Order U-22252, E.

Recommendation in U-22252, subdocket E will promote that goal, by allowing more end-users to choose an alternative voice provider without fear of losing their DSL service. BellSouth's policy of refusing to provide its DSL service over CLEC voice loops is clearly at odds with the Commission's policy to encourage competition. Likewise, BellSouth's contention that such a regulation would diminish competition in the DSL market is not consistent with the comments received.

Pursuant to its current DSL policy, BellSouth "simply chooses not to sell DSL service that work on CLEC loops."⁸ As summarized in KMC's comments, BellSouth's policy actually deters customers from switching to other providers, thus hindering competition not only in the voice market, but DSL market as well. Various other examples of the anti-competitive effects of this policy were contained in the comments of the CLECs, as summarized infra, including (1) disconnection of BellSouth DSL service when an end-user changes voice providers, (2) placing codes on Customer Service Records ("CSRs") that must be removed before transferring service, (3) placing DSL service on primary lines in multi-line situations without explaining the consequences to the end-user and (4) transferring back voice service if BellSouth's DSL is subsequently placed on the primary line. Interestingly enough, the only of the above examples BellSouth addresses in its reply comments is the primary line issue, referring Staff to the FCC's 271 order. BellSouth's failure to even dismiss or deny the other examples is of grave concern to Staff, as any of the above puts a voice CLEC in a clear competitive disadvantage by creating more "hoops" a CLEC must jump through to provide voice service, as outlined in Staff's summary of the individual comments.

⁸ See reply affidavit of Thomas G. Williams filed June 25, 2001 in Docket U-22252-E at page 11.

Rather than discuss the above concerns, BellSouth argues the Commission should make inquiries relative to the investments, personnel and taxes CLECs have made in Louisiana before it makes a decision. Staff is at a loss as to how any of this information, if obtained, would be of any benefit to the Commission or Staff. In furtherance of this position, BellSouth filed a Motion for Leave to Propound Data Requests on June 28, 2002. Staff is concerned this filing could not only result in an unnecessary delay in the issuance of Staff's Recommendation, but also could broaden the scope of the docket beyond the Commission's directive.

In conclusion, the Commission's policy is to support competition in all telecommunications markets, including local voice service. The anti-competitive affects of BellSouth's policy are at odds with the Commission's, and thus should be prohibited.

Jurisdictional Issues

While "jurisdictional issues" were not contemplated in the Commission's directive, Staff believes it is important it address this Commission's jurisdiction and how it is consistent with that of the FCC. As briefly summarized, *infra*, it is BellSouth's position that the LPSC has no jurisdiction to regulate the provisioning of its DSL service over CLEC voice loops. This argument is couched on the presumption that Staff's recommendation would essentially amount to LPSC regulation of DSL, which is a federally tariffed service. This argument fails to consider the basis of Staff's Recommendation in U-22252-E, i.e. the anticompetitive effect BellSouth's practice has on CLEC voice customers in violation of relevant LPSC, as well as FCC, rules and regulations, by restraining voice competition. Despite BellSouth's arguments to the

contrary, Staff's Recommendation in docket U-22252-E is entirely consistent with the Telecommunications Act, the Line Sharing Order and Line Sharing Remand Order.

The prevailing theme of the Local Competition Regulations is the Commission's goal of promoting competition in the local telecommunications market. Conversely, any practice that has a detrimental effect on competition is inconsistent and should be rectified. Further, Section 701 of the Local Competition Regulations, which established BellSouth's Consumer Price Protection Plan, provides in Section 701 G. 10, "Tying arrangements are prohibited."⁹ Staff is of the opinion that not only is BellSouth's current practice regarding the provisioning of its DSL service anti-competitive, it is also "tying arrangement." Simply put, BellSouth, as the dominant voice and DSL provider in Louisiana, is tying the provision of its DSL service to its voice service. Only end-users who receive voice service from BellSouth, or end-users of a CLEC reselling BellSouth's voice service, may receive BellSouth DSL.

Claims that various RBOCs are behaving in an anti-competitive matter concerning the provision of their DSL services to voice service are not new. In support of this practice, RBOCs have continuously argued the provision of DSL is federally regulated and as such cannot be addressed by state commissions. The issue was first raised in Louisiana by WorldCom's in its reply comments filed in Docket U-22252-E.¹⁰ To Staff's knowledge, this argument has never been successful, as each state commission

⁹ A similar provision applying to all certificated TSPs is contained in Section 301 J. 2 of the Local Competition Regulations.

¹⁰ Staff's recommendation in U-22252-E was based on its consideration of those initial comments, as well as BellSouth's subsequent reply

addressing DSL related issues has done so based on its authority to promote competition and address anti-competitive behavior.¹¹

In addition to Orders cited by the CLECs, the Michigan Public Service Commission, in Order issued in Case No. U-13193 on June 6, 2002 ("Michigan Order"), determined that Ameritech's practices concerning the provisioning of its DSL services were anti-competitive and therefore violated state law.¹² As was the case in the Florida Order, the Michigan Commission addressed issues identical to those being considered in this docket. Staff's Recommendation in U-22252-E, and its recommendation herein, are consistent with both orders.

BellSouth's is correct that the FCC stated in the Line Sharing Remand Order that the Line Sharing Order did not create an obligation that ILECs continue to provide xDSL service when they are no longer the voice provider.¹³ However, neither the Line Sharing Order, nor the Line Sharing Remand Order prohibit states from regulating anti-competitive behavior or illegal tying arrangements. In fact, the FCC specifically states in the Line Sharing Remand Order,

To the extent that AT&T believes that specific incumbent behavior constrains competition in a manner inconsistent with the Commission's line sharing rules and/or the Act itself, we encourage AT&T to pursue enforcement action.

Clearly the above pronouncement grants this Commission authority to rule on the issue before it without infringing on the FCC's jurisdiction, as the LPSC is acting in furtherance of its goal (and the FCC's) to promote competition, not attempting to regulate DSL service.

¹¹ See California Order at pages 6-11, Florida Order at pages 7-9.

¹² See Michigan Order at page 15.

¹³ As a reminder, the DC Circuit has vacated the Line Sharing Order.

In conclusion, any perceived conflicts between FCC and LPSC jurisdiction raised by BellSouth should be of no concern to this Commission, as it clearly has the authority to determine BellSouth's practices are contrary to LPSC rules and regulations, without fear of infringing on the FCC's jurisdiction or non-regulated areas.

Technical Issues

Staff's discussion of technical issues will be brief. Simply put, there is no technical reason set forth by BellSouth or the CLECs as to why BellSouth's xDSL service cannot be provisioned over CLEC voice loops. As mentioned throughout this recommendation, BellSouth's current practice is based on an internal policy decision.

Operational Issues

As set forth in Staff's Recommendation in docket U-22252-E, BellSouth's obligation to provide its DSL service over CLEC voice loops could be stayed if BellSouth provided evidence of "substantial operational issues" that must be resolved. Essentially this docket gives the parties the opportunity to review any such operational issues prior to any Commission Order being issued.

As summarized herein, all operational issues addressed by BellSouth in its comments involve additional costs it believes it would incur if it loses control of the local loop, but is still required to provide its DSL service. In response to these operational issues, Staff first notes that in U-22252-E, Staff recommended that CLECs not be allowed to charge BellSouth for use of its UNE loops. Despite the fact that SECCA has suggested otherwise, Staff had no intention of modifying that portion of the

recommendation. Therefore, any concerns relative to costs assessed to BellSouth for using the CLEC loop are moot.

Interestingly enough, the remainder of operational issues raised by BellSouth are arguably the same operational issues that exist for competitive DSL providers that do not control the voice portion of the loop. Any DLEC or CLEC providing DSL services only (i.e., one that is not also the voice provider) is in the same position. However, BellSouth argues such an arrangement causes operational issues that would drive up the costs of its DSL. As an alternative, BellSouth proposes CLECs convert UNE loops of BellSouth DSL end-users to resale, thereby allowing BellSouth to continue controlling the loop. As evidenced by the comments, not only is such a suggestion infeasible to some CLECs, it would only increase the costs and operational issues associated with providing voice service. Staff is not convinced that any of the operational issues provided by BellSouth are substantial to warrant it being absolved of providing its DSL service to CLEC voice customers. If anything, they suggest to Staff that BellSouth is leveraging position as the dominant voice provider with control of the network, to give itself another advantage over CLEC DSL providers.

Accordingly, Staff reemphasizes its U-22252-E recommendation to make it clear that BellSouth should not only be required to provision its DSL service to end-users over CLEC voice loops, but must do so utilizing the same non-discriminatory rates, terms and conditions it provides such services to its voice customers, as BellSouth's comments suggest it may simply raise the price of DSL to CLEC voice customers in such a fashion that Staff's Recommendation is rendered moot.

SUMMARY OF BELL SOUTH'S EXCEPTIONS

BellSouth's exceptions to Staff's Proposed Recommendation were filed on August 12, 2002, along with three affidavits. As set forth in the filing, BellSouth takes exception with Staff's Recommendation in six specific areas, as follows: 1. The Commission's Rules of Practice and Procedure do not authorize Staff to proceed in the manner it did in this docket; 2. The Commission does not have jurisdiction to alter or otherwise regulate BellSouth's Interstate Services; 3. Staff's Presumption that the Commission has prejudged this matter is wholly inappropriate; 4. CLEC Profit Margin, not customer choice is the core issue; 5. Operational issues exist and 6. KMC's Complaints referred to by Staff are unfounded. Rather than provide an exhaustive summary of these comments, Staff will simply refer to them in its Recommendation that follows.

CLEC REPLY COMMENTS

As mentioned *infra*, reply comments to BellSouth's Exceptions were received from WorldCom, SECCA, KMC, Access, DeltaCom, Xspedius and NewSouth. These reply comments address BellSouth's exceptions and provide support for the adoption of Staff's Proposed Recommendation, and include affidavits and other exhibits. No exceptions to Staff's Proposed Recommendation were received from the CLECs. Similarly as with BellSouth's comments, rather than provide an exhaustive summary of the reply comments, issues will be referred to in connection with Staff's Final Recommendation.

INFORMAL TECHNICAL CONFERENCE

Following receipt of BellSouth's exceptions and the replies thereto, Staff presided over an informal technical conference. Representatives of BellSouth, several CLECs, as well as Commissioners Blossman and Sittig and other Commissioner's Staffs, were present at the technical conference. The parties were given an opportunity to respond to the latest filings, ask and field questions and provide further support for their respective positions. Particularly, BellSouth witness Ruscilli went into detail explaining why he concluded in his affidavit that resale is a valid option for all end users of CLECs and BellSouth witness Milner explained his affidavit relative to Operational Issues. Following BellSouth's presentations, CLEC witnesses were given the opportunity to respond and/or ask questions of the witnesses. Questions were also posed by the Commissioners and Staff. Specifically questions were asked as to who would invest in order to ensure the entire state has DSL available. No affirmative response to deploy was received from the CLECs. In addition to the exceptions and replies, Staff considered this information in support of its recommendation.

STAFF'S FINAL RECOMMENDATION

As stated herein, Staff's role in this docket was to determine whether any policy or operational issues exist that would prohibit BellSouth from providing its ADSL service over CLEC loops. That is precisely what Staff considered in detail in its Proposed Recommendation, ultimately concluding that no such operational or policy issues existed. As no exceptions were provided by the CLECs, Staff's Final Recommendation will focus

on BellSouth's Exceptions and any impact they have on Staff's Proposed Recommendation.

Staff's Reply to Exceptions 1 and 3.

It is interesting that BellSouth begins its exceptions not by questioning Staff's Proposed Recommendation, but by questioning that the rulemaking procedure employed. BellSouth concludes the procedure violates not only the Commission's Rules of Practice and Procedure, but also Article IV § 21 of the Louisiana Constitution, with the suggested remedy being the Commission opening up a docket to establish concrete rules for such proceedings. A simple review of recent Commission history would question the correctness of this assumption. Staff, through the undersigned counsel, has been either counsel of record or co-counsel of record in numerous Commission rulemaking proceedings (and all of which included BellSouth as a party) in which essentially the same procedural rules were followed, without objection from BellSouth or others.¹⁴

Further troubling is BellSouth's statement that it was under the impression "Staff would consider the issues presented in this docket in a full and comprehensive manner as the 271 Order requires."¹⁵ Staff can only assume that BellSouth's is suggesting Staff's consideration of rounds of comments and exhibits received by the parties, numerous informal meetings addressing the issues, review of relevant FCC, LPSC and other PSC decisions, the result of which was a 24 page recommendation, was insufficient. The presumption referred to by Staff, to which BellSouth takes exception, did not in any way

¹⁴ U-23445, U-23446, U-24050, U-25754, R-26171 and R-26438 were all Rulemaking dockets involving Telecommunications issues. In most instances, fewer comments were received than allowed in this proceeding. Further, BellSouth did not question the procedure followed herein until after Staff's Recommendation, which took a contrary position, was issued.

¹⁵ BellSouth's Exceptions to Staff's Proposed Recommendation at page 5.

diminish the amount of consideration, time and effort that went into Staff's Recommendation. It was only after consideration of all information contained in this record that Staff issued its Proposed Recommendation. Nonetheless, any attempts to suggest the Procedure followed herein by Staff are inconsistent with the Commission's Rules and Regulations should be simply dismissed as an effort to create additional issues the Commission must consider.

Staff's Reply to Exception 2.

BellSouth also raises many of the same jurisdictional issues contained in its original comments in its exceptions. BellSouth suggests the effect of Staff's recommendation would be the imposition of disincentive to the deployment of DSL service, rather than the goal of promoting the accessibility of new and innovative services. Such a statement creates a slippery slope for Staff (and BellSouth) to tread upon. How can the Commission promote the deployment of a service over which BellSouth argues it has no jurisdiction over? Should Staff assume it is ok for the Commission to establish rules relative to interstate services, provided they only benefit the provider of such services?

By no means is Staff suggesting this recommendation would amount to a regulation of DSL services, however, it is interesting that BellSouth would have the Commission believe the Recommendation would hinder the further deployment of such services. According to BellSouth's experts, approximately 70-75% of BellSouth customers in Louisiana have access to its DSL, while only 5% or so subscribe to it. Staff would argue if any disincentive exists prohibiting BellSouth from further deploying its services, it's the demand for the product, not any order of this Commission. Staff's

Recommendation if adopted would only require BellSouth to continue providing its DSL service to customers currently receiving the service when they switch voice providers, and to voice customers of CLECs opting to receive the service, essentially meaning BellSouth will derive more revenue for its non-regulated service, in addition to furthering competition in the voice market.

BellSouth is also particularly objects to Staff's classification that BellSouth is "tying" its DSL service to its voice service, suggesting Staff has transformed this proceeding into an enforcement action. BellSouth's suggestion disregards the fact that Staff has recommended no penalties, fines or other administrative remedies be levied against BellSouth, only that it rectify any potential anti-competitive behavior. Staff agrees with SECCA that this Commission has the jurisdiction to rectify any potentially anti-competitive behavior without the necessity of instituting an enforcement action.

Staff's Reply to Exception 4.

In this exception, BellSouth provides arguments and testimony in support of its position that resale is a valid option for the CLECs, further arguing CLECs simply choose not to use it for cost reasons. While Staff appreciates BellSouth's comments relative to CLEC profit margins and the work done by Mr. Ruscilli relative to the costs associated with UNE-P versus resale, it must respectfully disagree with the conclusion. UNE-P has been recognized by this Commission as a valid form of competition, most recently in BellSouth's 271 application. As long as it is treated as such, CLECs should have the choice to determine how they choose to compete, rather than the choice being made by their competition. Not only does BellSouth's "Resale Option" restrict the mode of entry a CLEC can use, it also restricts the service offering that can be made to those

services contained in BellSouth's tariffs. For example, a CLEC such as WorldCom could not offer its "Neighborhood" plan via resale because BellSouth provides no similarly bundled service it can resell.

Staff's Reply to Exception 5.

Despite what is suggested by the CLECs in their reply comments, Staff never determined there were no operational issues that may be incurred by BellSouth. Staff simply concluded that none of the issues were substantial enough to warrant BellSouth being absolved from following Staff's Proposed Recommendation. BellSouth's exceptions and affidavits do shed further light on the potential operational issues it believes it will encounter if forced to implement Staff's Recommendation. While BellSouth qualifies these operational issues as burdensome, Staff believes the actual effect of the issues must specifically be determined before they absolve BellSouth from implementing Staff's Recommendation. For example, at least two of the operational issues raised by Mr. Milner in his affidavit are rendered moot by Staff's Proposed Recommendation wherein Staff concluded that CLECs should be prevented from charging BellSouth for use of the high frequency portion of the loop. While there is some overlap, the majority of the remaining operational issues would only apply when BellSouth is required to provide its DSL over CLEC voice loops, not UNE-P. Nonetheless, based on the above, Staff is willing to clarify its recommendation to the extent that the operational issues related specifically to UNE loops (facilities based providers) are determined to be overly burdensome. If such a determination is made, Staff would recommend that BellSouth be required to provide its DSL service only to CLEC customers via UNE-P, provided that BellSouth shall not prematurely disconnect

voice and data service to a customer converting service from BellSouth to a facilities based CLEC. Should a premature disconnection occur, BellSouth shall be fined up to \$10,000.00 per occurrence, as well as provide a full refund to the customer for the previous month's voice and data service. Additionally, Staff notes that due to the regional nature of BellSouth's Operational Support Systems, Staff would suggest any final decision of a Commission in the BellSouth region on this issue would require BellSouth to make the necessary operational changes, thereby re-instituting Staff's original recommendation.

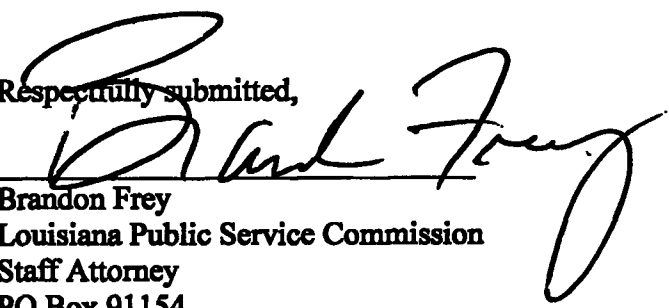
Staff's Reply to Exception 6.

Finally, BellSouth suggests that Staff wrongfully relied on KMC's allegations, suggesting KMC has a history of make allegations without any factual support. Such a suggestion is obviously refuted by the information provided to Staff counsel by KMC in Docket U-22252-E and the series of Collaborative workshops, which were referenced in support of the finding. Copies of those filings are contained herein.

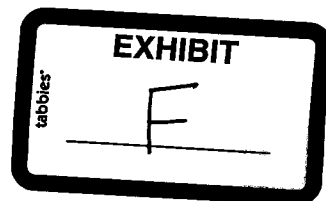
CONCLUSION

For the reasons stated above, Staff is of the opinion that its Recommendation, as contained in docket U-22252-E, and as modified herein, be adopted.

Respectfully submitted,



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- 1 **CHAIRMAN BLOSSMAN:** Next item.
- 2 **MS. GONZALEZ:** Exhibit 35 - An update by General Counsel Eve Gonzalez on
- 3 the status of the Southern Siding suit. As you know, Southern Siding appealed
- 4 our Order D-26759, and we filed exceptions. There was a hearing on December
- 5 8th, and the judge ruled in our favor, dismissing the suit for prescriptions, so, now
- 6 the next step is once the judgment is signed, we'll be enforcing the order.
- 7 **COMMISSIONER FIELD:** I think we'd all like to see that.
- 8 **CHAIRMAN BLOSSMAN:** Yes.
- 9 **COMMISSIONER DIXON:** So, what does that mean? They pay more, or they
- 10 pay less?
- 11 **MS. GONZALEZ:** If we can get them to pay. (LAUGHTER)
- 12 **COMMISSIONER DIXON:** Next.
- 13 **MR. ST. BLANC:** If they don't go bankrupt.
- 14 **COMMISSIONER DIXON:** That was 35. Next.
- 15 **MS. GONZALEZ:** Yes, 36 - Discussion at the request of Commissioner Dixon
- 16 regarding BellSouth Telecommunication's DSL Deployment Plans.
- 17 **COMMISSIONER DIXON:** What I got was, I had a meeting with Mr. Tommy
- 18 Williams and got what the central offices are going to be like. I think there was
- 19 some confusion in the process of our discussion, because from the bench I had
- 20 asked them to bring it to us, allow us to kind of decide on it, and then go forward.
- 21 That's not what Bell did. Bell went forward and did the deployment. However, I
- 22 did receive from Tommy another schedule of some 48 offices that are to be done,
- 23 and I'm understanding that these offices are going to be done -- can you tell us
- 24 when, Mr. Williams? I know you're here somewhere. Come on. Exercise a little

1 bit. Show your face and say, "Good afternoon." Tell us about when that will be
2 done.

3 **MR. TOMMY WILLIAMS:** Thank you, Mr. Chairman and Commissioners.
4 Tommy Williams, representing BellSouth. We plan, as a result of your price
5 protection plan extension that you just did, to complete our deployment of the 48
6 wire centers that remain. We have deployed about 180 of those now in the first
7 three quarters of 2004, and that will complete all of our wire centers around the
8 State, 228.

9 **COMMISSIONER DIXON:** When will the 48 be done?

10 **MR. WILLIAMS:** In the first three quarters of 2004, by September of next year.
11 We will complete it, and Louisiana, from a BellSouth standpoint, will be 100%
12 deployed in all of our wire centers for DSL.

13 **COMMISSIONER DIXON:** Okay. The area for Mr. Campbell, you're
14 covering those 23 offices, that pretty much tightens up the northern part of the
15 State, too?

16 **MR. WILLIAMS:** Yes, ma'am.

17 **COMMISSIONER DIXON:** As we committed to do.

18 **MR. WILLIAMS:** That's correct.

19 **COMMISSIONER DIXON:** Okay. Thank you so much.

20 **MR. WILLIAMS:** Thank you.

21 **COMMISSIONER DIXON:** I just asked for the report to make sure that we
22 knew when our DSL deployment would be complete, and I want to thank Mr.
23 Williams.

24 **MR. WILLIAMS:** Thank you.